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SUPREME COURT OF THE UNITED STATES.

[redacted] TERM, [redacted] 1916

No. [redacted] 264

[redacted]

UNITED STATES OF AMERICA EX REL. THE STATE OF LOUISIANA, PETITIONER,

vs.

[redacted] OF ALBERT SYDNEY, JUDGE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

[redacted]

PETITION OF PETITIONER TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

[redacted]

[redacted]

(24,000)

(24,950)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 667.

UNITED STATES OF AMERICA *EX REL.* THE STATE OF LOUISIANA, PETITIONER,

vs.

HON. ALECK BOARMAN, JUDGE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D. 1914, at Atlanta, Georgia, before the Honorable Don A. Pardee, Circuit Judge, and the Honorable William I. Grubb and the Honorable Rhydon M. Call, District Judges.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA, Petitioner,
versus
Hon. ALECK BOARMAN, Judge United States District Court, Western District of Louisiana, Respondent.

Be it remembered, that heretofore, to-wit, on the 17th day of April, A. D. 1914, a petition for writs of mandamus and certiorari directed to the Judge of the United States District Court for
b the Western District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said petition was filed and docketed in said Circuit Court of Appeals as No. 2636, as follows:—

c United States Circuit Court of Appeals for the Fifth Circuit.

No. 2636.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA
versus
Hon. ALECK BOARMAN, Judge United States District Court, Western District of Louisiana.

Petition for Writs of Mandamus and Certiorari.

—— ——, Attorney-General, State of Louisiana.

U. S. Circuit Court of Appeals. Filed Apr. 17, 1914. F. I. H. Mortimer.

1 United States Circuit Court of Appeals for the Fifth Circuit.

No. 2636.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA
versus
Hon. ALECK BOARMAN, Judge United States District Court, Western District of Louisiana.

Petition for Writs of Mandamus and Certiorari.

To the Honorable United States Circuit Court of Appeals for the Fifth Circuit:

The petition of the United States of America, on the relation of the State of Louisiana, appearing herein through Ruffin G. Pleasant,

Attorney-General, and Harry P. Gamble, Assistant Attorney-General, with respect represents:

2

I.

That, in the matter of the suit of the Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited, being No. 694, in equity, of the docket of the United States District Court for the Western District of Louisiana, since the rendition of the decree rendered by your Honors in No. 2446 of the docket of this Honorable Court, entitled Board of Levee Commissioners of the Tensas Basin Levee District, Appellants, vs. Tensas Delta Land Company, Limited, Appellee (wherein your Honors reversed the decree appealed from and remanded the case to the lower Court with directions to permit the filing of a certain proffered supplemental bill of complaint filed on behalf of plaintiff, the Board of Levee Commissioners of the Tensas Basin Levee District, and proceed with the cause), the parties to said suit, in the District Court aforesaid, pretended to compromise the issues of fraud involved in said suit, by the payment by the Tensas Delta Land Company, Limited, to the Board of Levee Commissioners of the Tensas Basin Levee District, on the 11th day of July, 1913, of the sum of one hundred thousand dollars ($100,000).

II.

That, following up said pretended compromise, the Tensas Delta Land Company, Limited, defendant in said suit, on July 19, 1913, presented a motion to the Honorable Aleck Boarman, Judge of said Court, a certified copy of which is hereto annexed and made part hereof, marked "Exhibit A," suggesting that the parties to said cause in said United States District Court for the Western District of Louisiana, had compromised the issues therein involved, for the sum of $100,000.

3

III.

That, thereupon, the said Court ordered (see Exhibit A) that the Board of Levee Commissioners of the Tensas Basin Levee District, complainant in said suit, and Ruffin G. Pleasant, Attorney-General of the State of Louisiana, attorney of record therein, who acted therein pursuant to Act No. 3 of the General Assembly of Louisiana of 1910 (Extra Session), to show cause why the said cause should not be dismissed at complainant's cost, and further ordering that, until said motion could be heard, all further proceedings in the said cause be stayed, and that the defendant land company be dispensed from any obligation to file any answer therein to complainant's bill and supplemental and amended bills, which latter this Honorable Court directed the lower Court to order filed in the appeal taken to this Court aforesaid, which bill and supplemental bill charged gross fraud committed against the Board by certain members thereof and its agents and agents of defendant in the consummation of the sale of the lands involved in said cause.

IV.

That, pursuant to said order to show cause issued by said Honorable Aleck Boarman, Judge in the said Suit No. 694, your petitioner, the State of Louisiana, through its Attorney-General, Ruffin G. Pleasant, did file objections to, and protest against, the dismissal by said District Court for the Western District of Louisiana of said suit on said pretended compromise, annexed hereto and made part hereof and marked "Exhibit B," alleging various reasons why said suit should not be dismissed, among other grounds, that the basis of the bill of complaint filed by the Board of Levee Commissioners of the Tensas Basin Levee District, was to set aside the sale
4 of said land to said Tensas Delta Land Company, Limited, in said Suit No. 694, on the ground of gross fraud perpetrated against the Board of Levee Commissioners of the Tensas Basin Levee District, complainant in said suit, by certain of the then members and agents of said Levee Board, and by said Tensas Delta Land Company, Limited, and certain of its agents, asserting that it was ultra vires of said complainant Board to enter into said compromise, and against public policy to permit the said compromise and the payment of money in compromise of a matter which was conceived in and brought forth in fraud; that, notwithstanding said protest was duly filed in said Cause No. 694, the Honorable Aleck Boarman, Judge of said court, did, on the 21st day of October, 1913, enter a final decree, ordering and adjudging and decreeing that the said compromise entered into aforesaid on the 11th day of July, 1913, between complainant and defendant "be, and the same is, recognized as having the effect of a thing adjudged and as settling all the issues involved in this cause, and the said suit is therefore dismissed as prayed for in said rule at the cost of complainant," which order will appear by reference to a certified copy hereto annexed and made part hereof, marked "Exhibit C."

V.

That the effect of said decree of dismissal of said suit was to ratify said fraud and put an end to said cause, and in effect permitted the compromise of a fraud for a moneyed consideration, which was and is reprobated by law and equity, and should not have been sanctioned by any Court of Justice.

VI.

Petitioner avers that the Board of Levee Commissioners of
5 the Tensas Basin Levee District, plaintiff in said cause, was created by Act No. 59 of the Acts of the General Assembly of the State of Louisiana, approved July 3, 1886, and other acts amendatory thereto, and that, pursuant to said act, said Board came into possession of the lands involved in said suit from your petitioner in order to provide said Board with additional means to carry out the purposes of said act, and to furnish said Board with resources to enable it to assist the State and her people in building and maintaining within or without the State a system of levees and other works

of public improvement, and to aid said Board in protecting from overflow property in the said Tensas Levee District, and the property of lower proprietors in other districts between the Tensas Basin Levee District and the Gulf of Mexico; that said Board is merely the trustee or business manager of the State in this matter and is subject to the State's paramount authority.

VII.

That all of the lands sued for by the said Board of Levee Commissioners of the Tensas Basin Levee District in said Suit No. 694 in equity, of the docket of the United States District Court for the Western District of Louisiana, were lands donated by your petitioner to said Board to enable it to carry out the purposes of said act, and consisted of lands which were originally granted by the Congress of the United States to petitioner, or of lands which were then or were thereafter to be forfeited to the State, or brought in by the State, or sold to the State, at tax sale for nonpayment of taxes, and therefore all of said lands were lands which at the dates of deeding same over to the Levee Board were property of the State, and any disposition of said lands by compromise of said suit affected pecuniarily the interests of your petitioner as a sovereign in said lands, in
6 a sum beyond four million dollars, particularly when based upon an issue of fraud, and also affected her fiscal interest in a sum far beyond the aforesaid sum, all as fully shown in the petition of intervention and appeal and assignment of errors, which were presented to the Court b-low, as hereinafter stated; that the State was injured and has an interest is shown in Little vs. Williams et al., page 70 of the United States Supreme Court Advance Opinions, No. 3, 1913, reaffirmed in Chapman vs. Levee District, page 297, No. 7, U. S. Act. Sheets (March 1, 1914), holding the State's interest is paramount, the Court saying:

"Assuming that the inchoate title had then passed to the levee district under the act of 1893, was the district in any better situation than the State? The answer turns upon the relation of the one to the other. The district was a mere political subdivision of the State, created by the latter, and invested with authority to construct and maintain levees to protect lands within its limits from overflow by the waters of the Mississippi River, and to levy and collect taxes and take other measures to that end. (Laws Arkansas, 1893, pp. 24, 119.) It was essentially a subordinate agency of the State, was exercising a power of the State for its convenience, could have no will contrary to the will of the State, held its property and revenues for public purposes, and was in all respects subject to the State's paramount authority. In view of this relation, we are quite clear that the State's action was binding upon the district, and that the latter could not, by its subsequent deed to the plaintiff, invest her with a title which it no longer possessed. In this respect the case is not distinguishable from Rogers Locomotive Mach. Works vs. American Emigrant Co., 164 U. S. 559, 577 (41 L. Ed., 552, 559; 17 Sup. Ct. Rep. 188)."

See, also, Fisher vs. Steele, 39 La. An. 452.

7 VIII.

That on the 6th day of April, 1913, the said Ruffin G. Pleasant, Attorney-General as aforesaid, did present in open court in the City of Monroe, La., to the Honorable Aleck Boarman, Judge of the United States District Court for the Western District of Louisiana, a petition of intervention and appeal from the judgment ratifying said compromise and dismissing said suit No. 694, duly verified by the Attorney-General, and assignment of errors on behalf of the State of Louisiana in the said matter of the Board of Levee Commissioners of the Tenas Basin Levee District vs. The Tensas Delta Land Company, Limited, No. 694, offering, at the same time, to give bond according to law, and which petition of intervention and appeal and assignment of errors are in the following words and figures, respectively, to wit:

(a) *Petition of Intervention and Appeal.*

No. 694. In Equity.

United States District Court for the Western District of Louisiana.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

To the Honorable the Judge of the said Court:

The petition of the State of Louisiana herein appearing through her Attorney-General, Ruffin G. Pleasant, duly authorized so to do by Section 131 of the Revised Statutes of the State of
8 Louisiana and Act No. 3 of the General Assembly of said State for the year 1910, Extra Session, which laws are made part hereof by reference, respectfully represents:

1. That the Board of Commissioners of the Tensas Basin Levee District, complainant in the above numbered and entitled cause, was created by Act No. 59, of the acts of the General Assembly of the State of Louisiana, approved July 3, 1886, and other acts amendatory thereof; that the purpose of the creation of said Board was for the raising, by taxation or otherwise, of revenue to protect the lands within the Tensas Basin Levee District created by said act, from overflow, by the construction and maintenance of levees, and that, in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable said Board to assist the State and her people in building and maintaining, within or without the State, a system of levees, and other works of public improvement, and to aid in protecting from overflow property in the said Tensas Levee District and the property of lower proprietors in other districts between the Tensas Basin Levee District and the Gulf of Mexico, it was provided in the said act that all lands then belonging to your petitioner, or that may afterwards belong to petitioner, the State of Louisiana, and embraced within the limits of said Tensas

Basin Levee District, shall be, and the same hereby are, given granted, bargained, donated, conveyed and delivered unto said Boar of Levee Commissioners of the Tensas Levee District, whether sai lands are the parts of lands originally granted by the Congress of th United States to petitioner, or whether said lands have been, or ma hereafter be, forfeited to or brought in by or for, or sold to, the Stat at tax sales for nonpayment of taxes. Said acts are made a par hereof by reference.

9 2. That, pursuant to the provisions of said acts, the Regis ter of the Land Office and other proper officials did convey t said complainant all lands of the character hereinabove describe belonging to your petitioner and embraced within the limits of sai Levee District.

3. That it manifestly appears, therefore, and petitioner so alleges that the State of Louisiana is the parent authority over, and creato of, the Tensas Basin Levee District, and the Board of Commissioner thereof; that the said lands were donated by the State to the Tensa Basin Levee District, as a trustee of said lands, with the requiremen that they should be administered honorably, prudently, and withou fraud; that the proceeds from the sale of same should be properl used in the building and maintenance of a large portion of the leve system of the State; that the compromise of any pecuniary interes of said Levee Board affects the State's entire levee system, necessi tates the levying of more taxes, and the expenditure of more revenu to the extent of the amount lost by such compromise; and that a fraudulent sale of public lands by a Levee Board, and the perpetu ation of that fraud by a succeeding Board, as in the instance shown herein, is a violation of the law, the public policy, the good morals and the conscience of said State, and of the United States, is not countenanced by the sovereign, and is ultra vires in every respect, and should not be upheld, permitted or acquiesced in by any Court seized of jurisdiction.

4. That, by Act No. 3 of the Extra Session of the General Assembly of the State of Louisiana for the year 1910, and the order of the Governor thereunder, the Attorney-General was directed to

10 bring suit for the recovery of four hundred and eighty thousand eight hundred and fifty-four dollars and fifty cents ($480,854.50), the price obtained by the defendant Land Company for a part of the aforesaid lands which had been illegally sold by the said Board to the said Tensas Delta LandCompany,Limited, through fraud practiced by certain of the then members of the said Board, and the said defendant company, and their agents, against the said Board, and against the State of Louisiana, and for the recovery of 432,109.95 acres of land, illegally sold to the defendant Land Company by said Board, through fraud practiced by said members of said Levee Board, and the said defendant company, and their agents as is fully shown by the bill of complaint on file herein; that the said lands, at the time of the filing of said bill, were worth at least four million three hundred thousand dollars ($4,300,000), and are of greater value at this time.

5. That, pursuant to said instructions, the Attorney-General, rep

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resenting the said Board, brought suit, as shown in the above numbered and entitled cause, to recover the said money and lands; that it was the intent and purpose of said instructions that the Attorney-General should prosecute the suit to a final determination for the purpose of establishing before the Courts the frauds committed against said Board, and the State of Louisiana, and charged in said bill of complaint, and no authority was given to the said Board of Commissioners, the Governor, the Attorney-General, or anyone else to compromise said cause.

6. That the defendant Tensas Delta Land Company, Limited, filed a demurrer to said bill of complaint, which demurrer was sustained by this Honorable Court, and the suit ordered
11 dismissed; that an appeal was taken by the Attorney-General for the Levee Board to the Honorable the United States Circuit Court of Appeals for the Fifth Circuit, and the judgment of the District Court was reversed, and your Honor was directed to permit the filing of a certain amended bill of complaint, which minutely detailed the facts and frauds upon which the complainant relied, and thus completely cleared the way for a trial on the merits.

7. That said judgment of the Circuit — of Appeals became final in April, 1913, and that on Juy 11, 1913, the aforesaid Levee Board, complainant, and the Tensas Delta Land Company, Limited, defendant, pretended to compromise the issue of fraud presented in the said bill of complaint, by the payment by said defendant to said complainant of the sum of one hundred thousand dollars ($100,000), which is only one-fiftieth of the least possible value of the lands and money sued for.

8. That on the 19th day of July, 1913, the said defendant presented and filed in this Honorable Court a motion to dismiss the suit against it, alleging that it had compromised the same with the complainant, as shown above; that the Attorney-General promptly filed in court a protest against said pretended compromise, against the said motion, and against the rendition of any judgment sustaining same; that, notwithstanding said protest, and notwithstanding that the proposed effect of said compromise was to perpetuate a fraud on the people of the said Levee District, and on the State of Louisiana, this Honorable Court did, on the 21st day of October, 1913, render judgment recognizing and maintaining said pretended compromise and dismissed the suit.

12 9. Now, your petitioner alleges that she has been aggrieved by the said judgment and decree to the extent of at least four million, six hundred and eighty thousand, eight hundred and fifty-four dollars and fifty cents ($4,680,854.50), as shown above, and that she desires to intervene in this cause and appeal same, and does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified herein, and in the assignment of errors, which is filed herewith.

Wherefore, complainant prays that this intervention and appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were made, and all other records in the cause, duly authenticated, may be sent to the United

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States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, in the manner and at the time prescribed by the law and by the practice of said Court; that citation issue to the Board of Commissioners of the Tensas Basin Levee District and to the Tensas Delta Land Company, Limited, in the manner and form prescribed by law, and that petitioner be granted such other and further relief as may be proper in the premises.

(Signed) R. G. PLEASANT,
Attorney General of the State of Louisiana.
(Signed) HARRY GAMBLE,
Assistant Attorney General of the State of Louisiana.

Here follows affidavit and order.

13 (*b*) *Assignment of Errors.*

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

No. 694. In Equity.

United States District Court for the Western District of Louisiana

Comes now the State of Louisiana, by her Attorney-General, and files the following assignment of errors upon which she bases her cause of appeal from the decree and judgment rendered by this Honorable Court on the 21st day of October, 1913, in the above numbered and entitled cause, and upon which she relies for a reversal of said judgment and decree:

I.

That said Court erred in rendering a judgment recognizing and perpetuating a compromise entered into between the complainant and defendant herein, because the question of fraud was the only issue in the suit, and that when the Levee Board comprised the suit for $100,000 it compromised a fraud which it necessarily still asserted to be true in order to exact the said sum; that, therefore, the petition to dismiss this suit was presented by the said Board and by said Land Company with unclean hands to this Court; that it is as much the right, the duty and the power of the Court to refuse a litigant the privilege of withdrawing from its jurisdiction with
14 unclean hands as it is to permit the litigant to come into court with hands that are stained; and that it is respectfully urged that the Court, of its own accord, in defense of its dignity, in the interest of justice, and as a salutary warning that unconscionable litigants may not perpetuate a fraud and a crime through the decrees of the Court, should have denied the motion to dismiss and should have refused to recognize the compromise as having the effect of a thing adjudged, even though no opposition thereto had been filed.

II.

That said Court erred in the rendition of said judgment for the reason that said compromise has not the effect of a thing adjudged, the test of such effect being whether, under any circumstances, or under any conceivable state of facts relative to the issue—the issue of fraud vel non—the Court could render a judgment embodying the terms of the said compromise. That in the case at bar the Court, on the merits, would necessarily be compelled to find either that fraud had been committed, and that the contract of sale of the property involved should be annulled in its entirety, or that there had been no fraud, and that nothing is due the complainant Levee Board. That the Court could not, under any view of the case, condemn the defendant to pay $100,000 to the complainant, and that the compromise, therefore, cannot be regarded as having the effect of a judgment, for the reason that it is not responsive to any theory of the law or facts applicable to the case.

"No compromise by the parties of differences in respect to an illegal contract would purge it of illegality."

15 A. & E. Enc. of Law, 996, and authorities therein cited.

15 In Barton vs. Port Jackson, etc., Ry. Co., 17 Barb. N. Y.) 408, it is said:

"Every new agreement entered into for the purpose of carrying into effect any of the executed provisions of a previous illegal contract is void."

See, also, 11 Wheat. 258.

In Ramser vs. Moore, 21 S. E. Rep. 80, the Court said:

"A contract executed in consideration of a previous illegal one, or in compromise of differences growing out of it, wherever it rests, is illegal, incapable of being enforced."

Bishop, Cont. 488; Greel, Pub. Policy, p. 8, Rule 10; Wilson vs. Benjamin, 48 Ala. 71.

See, also, the case of Bick vs. Seal, 45 Mo. App. 475, in which the Court held that a new contract entered into for the purpose of consummating a previous illegal contract is void equally with the old one.

See, also, Woodsworth vs. Bennett, 43 N. Y. 273; see, also, Civil Code, Article 19 and Article 1819 et seq.

III.

That the Court erred because the said compromise was entered into in defiance of the wishes and without the approval of His Excellency L. E. Hall, Governor of the State of Louisiana, who has the chief official control of this case under the provisions of Act No. 3 of the Extra Session of the General Assembly of the State of Louisiana for the year 1910, and that no compromise of the issue in this cause can be effective without his consent, in any event.

16

IV.

That the Court erred for the reason that the record does not show that the Governor authorized the dismissal of said suit, it being a fact that no such authorization was given by him, and that said suit could not be legally dismissed without said authorization.

V.

Wherefore, petitioner prays that the decree and judgment of the District Court be reversed, and that it be ordered to proceed with the trial of said cause according to law.

(Signed) R. G. PLEASANT,
Attorney-General of the State of Louisiana.
(Signed) HARRY GAMBLE,
Assistant Attorney-General of the State of Louisiana.

IX.

That on the said sixth day of April, 1914, in open court, at Monroe, La., the said Honorable Aleck Boarman, Judge of said United States District Court, who was then holding a term of said court in the City of Monroe, upon considering the said petition of intervention and appeal and assignment of errors, refused to allow or grant petitioner, the State of Louisiana, authority to intervene in said cause No. 694, and refused to grant your petitioner an appeal from the decree of dismissal of said cause rendered by said District Court in said cause which ratified the compromise above referred to on the 21st day of October, 1913, holding that the State of Louisiana was not entitled to and could not intervene and appeal from the

17 decree of the said District Court in said cause No. 694, rendered on the said 21st day of October, 1913, ratifying said compromise.

X.

Your petitioner shows that she has a paramount and superior right as a sovereign State to intervene in said suit No. 694, for the reasons heretofore and hereinafter alleged, and is, therefore, entitled, as a matter of law and equity, to an appeal to this Honorable Court from said decree of October 21, 1913, ratifying said compromise aforesaid.

XI.

That it is her duty as a sovereign State to at all times see that her citizens and taxpayers be not deprived of their property except in the manner and form provided by law, and the action of the Court in ratifying said compromise and in refusing petitioner an appeal is taking its property without due process of law, in all of which she has a paramount interest.

XII.

That the compromise entered into by and between the Board of Levee Commissioners of the Tensas Basin Levee District and the

Tensas Delta Land Company, Limited, upon which the said decree of October 21, 1913, ratifying said compromise, was predicated, was the compromise of a fraudulent act, and the said Board of Levee Commissioners of the Tensas Basin Levee District, being a mere agent or trustee of the State, was without right or authority to compromise a fraud, to the detriment and injury of the citizens and taxpayers of the State of Louisiana and your petitioner; and, moreover,
18 that said compromise was a mere perpetuation of a fraud, which is always and at all times and under all circumstances most reprehensible and never countenanced in law or equity, and against good morals and public policy, not only of the State of Louisiana, but of the United States; and that in permitting the Tensas Delta Land Company, Limited, defendant in said cause, to file its motion to dismiss said cause No. 694 from the docket of said court, based on said pretended compromise, said Court permitted the defendant in said cause to come into court with unclean hands, and that said Court should not have taken cognizance of said motion, and should not have lent its aid to either party to settle a matter which is reprobated by law, and that it was the duty of said Court to have noticed the character of said transaction ex officio, and to have left the parties to the same where their conduct had placed them; and that, upon the filing of said motion, your petitioner did protest against said Court taking cognizance of said motion, but said Court nevertheless ratified said fraud by recognizing the compromise as having the effect of a thing adjudged, in violation of the rules of equity and in violation of the rights of your petitioner, all of which was against public policy.

XIII.

Your petitioner shows that by the decree of dismissal, which is a final judgment, your petitioner has been denied relief in the premises, which it can only obtain by and through the appeal sought to be obtained in said proceedings, and that said decree, unless reversed, and the refusal of said Judge to grant an appeal therefrom, will cause your petitioner irreparable injury; that by the refusal of said Court to permit your petitioner to intervene in order to prosecute in
19 said cause No. 694 an appeal from the final judgment of dismissal rendered in said cause ratifying said compromise, your petitioner has been, and will continue to be, financially and irreparably injured and aggrieved in a sum not less than four million dollars, and that petitioner is entitled to take, and should be allowed, to intervene and appeal the said cause No. 694 to this Honorable Court, so that the errors complained of to the prejudice of your petitioner, the State of Louisiana, may be rectified and corrected on appeal.

XIV.

Your petitioner avers that it is without adequate remedy in law or equity except to invoke the interposition and authority of this Honorable Court for writs of mandamus and certiorari directed to the Honorable Aleck Boarman, Judge of said court, ordering and

directing said Judge to permit and authorize your petitioner to intervene and to allow petitioner an appeal from the said judgment rendered, and also directing Hon. Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, to prepare, according to law, a transcript of the record and proceedings had in said cause No. 694, in order to perfect petitioner's record of appeal, and to that end that the Clerk may be commanded to send up, under the hand and seal of said Court, a certified copy of all the proceedings had, papers and documents filed in the suit No. 694, in equity, of the docket of said United States District Court for the Western District of Louisiana, Monroe Division, entitled Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited, up to and including the minutes showing the disposition by said Court of petitioner's petition of intervention
20 and appeal and assignment of errors, and particularly a certified copy of the petition of intervention and appeal and assignment of errors hereinbefore referred to, which were tendered to said Court on the 6th day of April, 1914, so that your Honors may review the same with the view of determining petitioner's right of appeal.

XV.

Petitioner avers that the right of intervention and appeal in equity, which was applied for by relator in the court below, and declined by the Judge of said lower court, is given not only to those who are parties to the cause in which a judgment has been rendered against them, but also to third persons, not parties to same, when such third persons allege and show that they have been aggrieved by the judgment rendered; that the form of procedure sanctioned by Article 571 of the Code of Practice of the State of Louisiana relative to appeals is also sanctioned by courts of equity throughout the United States, as shown by decisions of the United States Court, and by text-writers of high authority, as will be shown by the following:

In Foster's Federal Practice, Vol. 1, p. 841, verbo Practice on Interventions, on the question of the right of a party to intervene, it is said:

"It has been held that the proper practice is for the District Court to grant an appeal in every case, leaving the question of the appealability of the order for the decision of the court of review."

Citing, in support of said text, United States vs. Phillips (C. C. A.), 107 Fed. 824.

21 And that:

"It may, perhaps, be reviewed in an extraordinary case by an application to the court of review for a mandamus."

Citing In re Metropolitan Railway Receivership, 208 U. S. 90; Fink vs. Bay Shore Terminal Company, 144 Fed. 837.

And Simpkins in his work, "A Federal Equity Suit," edition of 1911, page 493, announces the same doctrine.

See, also, United States vs. Northern Securities Company, 128 Fed. 808, holding:

"Nor will intervention lie after decree, unless to protect an interest which cannot otherwise be protected."

XVI.

And your petitioner avers, in line with this authority, that its interests in the subject-matter of the aforesaid suit cannot be otherwise protected except by and through an appeal from the final judgment ratifying said compromise and dismissing said suit, which the Judge of the lower court refused to grant your petitioner, and that a writ of mandamus, on the authority of United States vs. Gomez, 3 Wall. 752, lies where a petition for appeal was improperly denied, and is the exclusive remedy.

XVII.

Petitioner avers that the Judge of said lower court, in view of the fact that the action of said Court was a final adjudication, in that it denied petitioner relief which it could only obtain by and
22 through an intervention and appeal in said cause, has committed an error to its prejudice; moreover, said Court should have granted the appeal, leaving to this Honorable Court the question of the right of your petitioner to an appeal, as was held in the case of United States vs. Phillips, 107 Fed. Rep. 825, where the United States Circuit Court of Appeals for the Eighth Circuit held:

"When the record is removed to the appellate court, it can then be determined by that tribunal whether the action of the lower Court is purely discretionary, and its judgment is final, or whether the intervenor was entitled to assert his rights by an intervention."

Which decision is still in full force and effect; the Court further holding:

"Such course of procedure on the part of the Chancellor would seem to be necessary, because, if a mistake is made by the lower Court as to the character of the intervention, and the Chancellor refuses an appeal, the intervenor is entirely without a remedy."

And in which the Court further held:

"In view of these considerations, we think that in the present instance the Chancellor should have allowed the appeal, and that a motion should have been made in the appellate tribunal to dismiss the appeal."

That, in thus proceeding, the Judge below has committed an error in failing to grant your petitioner an appeal, leaving the question of the right of appeal to be passed upon by this Court by motion to dismiss or ex proprio motu.

23

XVIII.

Petitioner avers that it is informed and believes, and so avers, that the Court, in refusing to permit petitioner to file its appeal of intervention and appeal, assignment of errors and bond of appeal, based its ruling on the decision rendered by the Supreme Court of Louis-

iana in the matter of State vs. Tensas Delta Land Company, Limited reported in 126 La. 59. Petitioner avers that there is nothing in said decision justifying the said Judge in refusing to allow petitioner the right of appeal from the judgment of dismissal rendered on the motion of the Tensas Delta Land Company, Limited, in said cause No. 694; that said report will show that said proceeding was a suit by the State of Louisiana seeking to set aside the sale of these very same lands for the same reasons set up in the bill of complaint filed in said cause No. 694 by the Board of Levee Commissioners of the Tensas Basin Levee District.

XIX.

Petitioner alleges that the opinion of the Supreme Court in said case held that, as the lands donated by your petitioner, the State of Louisiana, to said Levee Board stood of record in the Conveyance Office in the name of the Levee Board, the said Levee Board alone so long as that conveyance stood of record, could bring suit for the recovery of said lands, based upon the allegations of fraud contained in the suit filed by the State, and the Court, moreover, refused to sustain the suit of the State because the prayer of the petition filed by the State in said matter was that the lands conveyed by the Levee Board to the Land Company "be decreed to belong to the State and be delivered to the State," the Court holding that the effect of
24 granting such a prayer would be to take away those lands from their legitimate custodians, the corporation to which the Legislature had given them, and under whose control the Legislature provided they should be, and turn them over to the State by decree of court, thereby frustrating and nullifying an admittedly valid act in fact, practically repealing the statute, which the Legislature has not done. However, the Court was careful to state:

"If the governing body of one of these corporations fails in its duty to bring a suit which clearly it ought to bring, the Courts may—only, however, under highly exceptional circumstances—allow any citizen or taxpayer of a district to bring the suit; and in such a case the same privilege might for the same reason be extended to the State. But nothing of that kind is pretended in this case. There is no suggestion that the Board of Commissioners of the District has failed to bring suit, or is unwilling to do so. In fact, this Court knows to the contrary from the public prints."

XX.

Your petitioner avers that it is plainly shown from the quotation from said decision above made that the State ought to be permitted to prosecute this appeal, since the Board of Levee Commissioners has failed in its duty to prosecute a suit which clearly it ought to prosecute, and has actually compromised a matter to the detriment of your petitioner; and, as said Levee Board has failed in its duty to prosecute said suit, the same privilege of prosecuting said suit, by appeal from said judgment, should be extended to your petitioner, the State of Louisiana, particularly since the said suit has been prosecuted by

virtue of Act No. 3 of the Extra Session of the Legislature of
25 the State of Louisiana for the year 1910, making it the duty of the Attorney-General, when requested by the Governor (as the Attorney-General was so requested herein), to file suit, which act intended that said suit should be prosecuted to final judgment on its merits.

XXI.

Petitioner alleges that it was not the intention of the Court to hold that the State of Louisiana has absolutely no interest in the fraudulent sale of land made by one of its levee boards, but that it could only have a standing in court to assert its rights where the levee board failed in its duty to bring a suit (in this case, to prosecute a suit) which it ought to bring; and, inasmuch as the Levee Board has failed in its duty to prosecute the suit No. 694, it was not only the right, but the bounden duty, of your petitioner to step in and protect its interests, and those of its inhabitants, by the prosecution of an appeal from the judgment rendered in said cause and heretofore recited.

XXII.

Your petitioner further alleges and avers that the pretended compromise which was ratified by the decree rendered on the 21st day of October, 1913, was an acknowledgment that the said Tensas Delta Land Company, Limited, had no title to said lands, and the effect of such compromise is that of a sale. Under the provisions of Act 215 of the General Assembly of the State of Louisiana of 1908, it is expressly stipulated that no sales of any lands belonging to any of the levee boards of this State shall be made except to the highest bidder for cash, after complying with all of the provisions of said act; that the said compromise was in reality a sale of the property
26 and lands of the said Levee Board, and done by said Board in violation of said law, and that said Board in consummating said pretended compromise went beyond and transcended the authority vested in it, there being nothing in the statutes creating said Levee Board authorizing it to compromise the title of any of its lands; that the only method and means whereby any of the levee boards in this State can dispose of its property, particularly of those lands which have been granted to it under the act creating it, can only be made by complying with the provisions of Act 215 of 1908, which act only authorizes the levee board to sell its lands on the application of any prospective purchasers to the president of the levee board, and to be sold at a minimum price to be fixed by the Register of the Land Office of the State of Louisiana, after due advertisement, as provided for in said act.

XXIII.

Petitioner avers that it has been held in innumerable instances that "every new agreement entered into for the purpose of carrying

into effect any of the executed provisions of a previous illegal contract is void."

Barton vs. Port Jackson, etc., Road Co., 17 Barb. (N. Y. 408; Ramseur vs. Moore, 21 S. E. Rep. 80; Vick vs. Seal 45 Mo. App. 475; Woodsworth vs. Bennett, 43 N. Y. 273 Gill vs. Williams, 12 La. An. 219; Bartell vs. Nutt, 4 Pet 184; Davis vs. Holbrook, 1 La. An. 176; Armstrong vs Toler, 11 Wheat. 258.

In the latter case the Court said:

"Where the contract grows immediately out of or is con
27 nected with an illegal or immoral act, a court of justice will not lend its aid to enforce it; and if the contract be in fact only connected with the illegal transaction, and growing immediately out of it, though it be in fact a new contract, it is equally tainted by it."

See, also, Bartell vs. Coleman, 4 Pet. 189, and cases in Appendix.

Petitioner avers that, said compromise having been entered into directly as a result of the fraud practiced by the parties to the suit hereinbefore fully recited, no compromise entered into thereafter could be ratified by any court of justice.

Petitioner begs leave to cite in the appendix authorities showing that said compromise could not be the subject of ratification and the illegal nature of said compromise.

Petitioner avers that due notice of intention to apply for writs of certiorari and mandamus was given in open court to all parties interested on April 6, 1914, and that another written notice of intention to apply for writs of mandamus and certiorari was also duly mailed to the Judge of the lower court, to the Board of Levee Commissioners of the Tensas Basin Levee District, to the Tensas Delta Land Company, Limited, and to the Clerk of the United States District Court for the Western District of Louisiana, on April 14, 1914.

Petitioner asks leave to make the record of said cause in No. 2446, on appeal to this Court, a part of this proceeding, so that your Honors may have before you on this application the nature of the proceedings in said cause.

Wherefore, the premises and annexed affidavit considered, your petitioner prays that she be permitted to file this petition, and for
28 a further order directed to Honorable Aleck Boarman, District Judge of the United States for the Western District of Louisiana, directing the said District Court to show cause why a writ of mandamus should not issue out of this Honorable Court, ordering and commanding the said Judge to permit petitioner to file said petition of intervention and appeal and assignment of errors, together with bond, and ordering and directing said Judge to allow your petitioner an appeal from said judgment rendered in the matter entitled Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited, No. 694 of the docket of said court, and ordering that an order of appeal be granted

in this case from the decree of the 21st day of October, 1913, which ratified said compromise, and to accept bond, and that such appeal be allowed returnable to this Honorable Court according to law, and as of date when said application was made originally, rejected and refused by the said District Court; or for alternative relief by way of appeal granted by your Honors and, further, petitioner prays that the said Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, be directed and commanded to certify and send to this Honorable Court a full and complete transcript of the record and all proceedings had in said District Court in the matter of the Board of Levee Commissioners of the Tensas Basin Levee District vs. The Tensas Delta Land Company, Limited, No. 694 of the docket of the United States District Court for the Western District of Louisiana, in order that the correctness of the ruling of said Judge in refusing to allow your petitioner to file its petition of intervention and appeal and assignment of errors, and refusing to your petitioner an appeal and bond, may be reviewed; and that, after due proceedings had, said mandamus be made peremptory; and that in due course a certified copy of the proceedings had and papers filed in said cause be duly filed in this Honorable
29 Court, in order that the appeal sought to be taken herein may be heard and considered according to law; and for such other and further relief and orders as to this Honorable Court may seem just and proper; and your petitioner will ever pray.

(Sig.) R. G. PLEASANT,
Attorney-General State of Louisiana.

(Sig.) HARRY P. GAMBLE,
Assistant Attorney-General.

(Signed) G. A. GONDRAN,
(Signed) DANIEL WENDLING,
Of Counsel.

Affidavit.

UNITED STATES OF AMERICA,
State of Louisiana:

Before me, the undersigned authority, personally came and appeared Harry Gamble, Assistant Attorney-General of the
30 State of Louisiana, thereunto authorized by law, the Attorney-General being absent from the State, who, upon being duly sworn, did depose and say:

That all of the facts and allegations contained in the foregoing petition for writs of mandamus and certiorari are true and correct, except as to such matters alleged on information and belief, as to which he believes them to be true.

(Signed) HARRY P. GAMBLE.

Sworn to and subscribed before me this 16th day of April, 1914.

[SEAL.] (Signed) JOHN A. KLOTZ,
Deputy Clerk Supreme Court of Louisiana.

31 *Appendix.*

Exhibits A, B, and C, and Authorities.

EXHIBIT A.

United States District Court, Western District of Louisiana, at Monroe.

No. 694.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, Limited.

Now comes the defendant, the Tensas Delta Land Company, Limited, and on suggesting to the Court that the final decree herein enter-d dismissing the bill was reversed by the United States Circuit Court of Appeals and the cause remanded, with instructions to permit the complainant to file certain proffered amendments to its original and supplemental bill and ordering the defendant to file its answer to the said bills as amended within twenty days; and on further suggesting that this Court, on the application of the defendant, extended the time for it to answer to the rule day in August, 1913; and on further suggesting to the Court that by resolution adopted on
32 the 11th day of July, 1913, duly confirmed by a notarial act duly passed before G. F. Purvis, Clerk of the Seventh Judicial District Court in and for the Parish of Richland, copies of which notarial act are hereto annexed and made part of this motion, the parties to said cause have compromised the same and all the issues therein involved, and this defendant in execution of said compromise has paid to the complainant the sum of one hundred thousand dollars ($100,000), and the said complainant in and by said resolution and notarial act of compromise has agreed to dismiss this cause from the docket of said Court at its costs.

And, on further suggesting to the Court that said compromise has the effect of the thing adjudged in favor of this defendant, and that there is no further need for any further proceedings in this cause and that defendant is by the said compromise relieved from any obligation to answer herein.

It is ordered by the Court that the Board of Commissioners of the Tensas Basin Levee District, complainant herein, and R. G. Pleasant, Attorney-General of the State of Louisiana, attorney of record of said complain-t, do show cause on a day to be named by the Court why this cause should not be dismissed at the cost of the complainant.

And mover further prays that until this motion can be heard, all further proceedings herein be stayed and defendant be dispensed from complying with the order herein entered directing it to answer the bills and supplemental and amended bills of the complainant herein.

FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
HENRY BERNSTEIN,
Solicitors.

33 Edgar H. Farrar, being duly sworn, deposes and says that he is one of the solicitors of the defendant, which is a non-resident corporation; that he has read the foregoing motion and knows the contents thereof, and that all the facts therein stated are true, and that the copies of the resolution of the Board of Commissioners of the Tensas Basin Levee District, of date July 11, 1913, and of the notarial act of compromise between the said Board of Commissioners of the Tensas Basin Levee District and the Tensas Delta Land Company, Limited, the complainant and the defendant in the above entitled and numbered cause, are correct.

EDGAR H. FARRAR.

Sworn to and subscribed before me this 16th day of July, 1913.

[SEAL.] SCOTT E. BEER,
Notary Public.

Order.

The foregoing motion and affidavit, and the exhibits thereto being considered,

It is ordered that the complainant, the Board of Commissioners of the Tensas Basin Levee District, and R. G. Pleasant, Attorney-General, its counsel of record herein, do show cause on the 1st day of the next term of this Court to be holden at Monroe, La., why this cause should not be dismissed at the complainant's cost; and it is further ordered that, until this motion can be heard, all further proceedings in this cause be stayed and the defendant be dis-
34 pensed from any obligation to file any answer herein to the complainant's bill and supplemental and amended bill.

ALECK BOARMAN,
United States District Judge for the Western District of Louisiana.

July 19, 1913.

Endorsed: No. 694. U. S. Dist. Court, Western Dist. of La., at Monroe. Bd. of Commissioners Tensas Basin Levee Dist. vs. Tensas Delta Land Co., Ltd. Motion by Defendant and Order for Complainant to show cause at Monroe, Oct. Term, 1913. Filed July 22, 1913. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana.

United States District Court, Western District of Louisiana.

Clerk's office.

I, Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the above and foregoing two pages contain a true, full and correct copy of rule to show cause in a cause entitled Board of Commissioners
35 of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited, No. 694, in equity, on the docket of said Court, as the original of same appears on file in this office.

Witness my hand and seal of office, at the City of Shreveport, Louisiana, on this the 23rd day of July, A. D. 1913.

[SEAL.] LEROY B. GULOTTA,
Clerk United States District Court,
Western District of Louisiana.

EXHIBIT B.

United States District Court for the Western District of Louisiana, Monroe Division.

No. 694.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

Now comes R. G. Pleasant, Attorney-General of the State of Louisiana, and the attorney of complainant in the above numbered and entitled suit, and, in answer to the order of the Court to show cause why this suit should not be dismissed and further proceedings stayed because of an alleged agreement entered into between the complainant and the defendant herein, avers that said agreement
36 should not be recognized, nor this suit dismissed, for the following reasons:

First. The said suit is based upon a fraudulent sale of nearly 900,000 acres of land belonging to the complainant, and the said fraud vitiates the contract of sale.

Second. A fraudulent sale of public lands cannot be ratified and approved by a subsequent agreement between the vendor and the vendee. Only a new legal and honorable sale, for an adequate consideration, can operate a transfer of said property. The ratification of a fraud is no more legally binding than the perpetration of the original fraud itself, and no government, governmental agency or subdivision, or court, can justify the one nor condone the other. This results not only from the positive expressions of the law, not only because it is contra bonos mores, but also because it is inherently one of the fundamental objects *to* government to prevent and punish fraud, and especially fraud against the Sovereign. Government and fraud are basically antagonistic. Either fraud must be condemned and government upheld or fraud upheld and government abandoned.

The motion to dismiss this suit states that the differences between the parties thereto have been settled and compromised by the payment of $100,000 by defendant to complainant. The only point in dispute was the question of fraud, all others having been abandoned during the progress of the case, as shown in the judgment of this Honoarble Circuit Court of Appeals and by admission of complainant's counsel in open court. The question compromised, therefore, was that of fraud, and nothing else, and the Court

should not favor wrong instead of right by dismissing a suit of which it has full and complete jurisdiction.

37 Third. Complainant should not be permitted to use the Court and its processes for the purpose of condoning and compromising fraud for money.

Fourth. The Attorney-General cannot dismiss this suit without express authority from the Governor of the State of Louisiana so to do, for the reason that his right to represent complainant herein and prosecute this suit was conferred upon him by the Governor under the provisions of Act No. 3 of the Extra Session of the General Assembly for the year 1910, and said right has never been withdrawn; that the Attorney-General is not answerable to the complainant for his management of this suit, nor is he bound to dismiss same at the request of said complainant; that the effect of said act of the Legislature is to place the Governor in supreme charge of this and similar suits in the event he chooses to proceed under the act in any particular suit; that the Attorney-General is directly responsible to him, and to him alone; that it was the intention of the Legislature, in passing the statute above cited, to give to the Governor, and, through him, to the Attorney-General, the control of suits of this character, and, on account of this control, prevent the compromise of the public's rights and interests, such as the Board of Commissioners of the Tensas Basin Levee District has attempted to do in the present instance; that the complainant cannot compromise this suit, nor the Court dismiss it, without the Governor's consent in any event.

Wherefore, respondent prays that defendant's motion to dismiss be denied; that the agreement upon which it is based be disregarded; that defendant be ordered to file its answer to the complaint immediately; and that the trial of this case on the merits be proceeded with without delay.

38 Further prays for all necessary orders and general and equitable relief.

(Signed) R. G. PLEASANT,
Attorney-General, State of Louisiana, and
Attorney of Record for Complainant.

R. G. Pleasant, being duly sworn, deposes and says that he is the Attorney-General of the State of Louisiana, and attorney of record for the Board of Commissioners of the Tensas Basin Levee District, complainant in the foregoing entitled and numbered suit; that he prepared the foregoing answer to the order to show cause why the said suit should not be dismissed, and knows the contents thereof; that all of the facts stated in said answer are true and correct; and that the matters of law therein recited are applicable and correct to the best of his knowledge and belief.

(Signed) R. G. PLEASANT.

Sworn to and subscribed before me this — day of ——, 1913, at the City of ——, Parish of ——, Louisiana.

—— ——.

39 EXHIBIT C.

United States District Court for the Western District of Louisiana, Monroe Division. In Equity.

N. 694.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

In this cause there came on to be heard the motion of defendant to dismiss said cause at the cost of complainant, pursuant to an act of compromise in writing between the parties bearing date the 11th day of July, 1913. Upon such hearing it was made to appear that the order directed to complainant and its counsel, the Honorable R. G. Pleasant, Attorney-General of Louisiana, issued by this Court on July 19, 1913, and commanding them to show cause before this Court on the first day of its then next term why said cause should not be dismissed as prayed by defendant, was duly served on them as therein provided, and that said complainant appearing herein by its president, T. B. Gilbert, thereunto duly authorized, filed its answer consenting to such dismissal, and that the Hon. R. G. Pleasant, Attorney-General of the State of Louisiana, filed his separate answer objecting to such dismissal. The hearing upon said motion to dismiss was continued from the first day of term until the present day. Henry Bernstein and W. F. Keeney appeared in support of said motion to dismiss, and no one appeared in opposition thereto save as opposition was made by the answer of the Attorney-General.

40 And upon full consideration thereof, it appearing to the Court that all and singular the matters set forth in the bill of complaint and amended bills of complaint have been forever compromised and settled between the parties to this suit, and that the compromise in writing between the parties bearing date the 11th day of July, 1913, has the force and effect of a thing adjudged.

It is, therefore, ordered, adjudged and decreed that the said compromise entered into by and between the complainant and defendant herein on the 11th day of July, 1913, be, and the same is, recognized by this Court as having the effect of the thing adjudged and as settling all the issues involved in this cause, and the said suit is therefore dismissed as prayed for in said rule, at the cost of complainant.

Done, read and signed in open court at the City of Monroe, Louisiana, on this 21st day of October, A. D. 1913.

ALECK BOARMAN,
U. S. Judge.

Endorsed: No. 694. U. S. District Court, Western Dist. of Louisiana. Board of Commissioners of Tensas Basin Levee District vs.

Tensas Delta Land Co., Ltd. Decree Dismissing Suit. Filed Oct. 21, 1913. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 3, Folio 243.

41 *Clerk's Office.*

I, Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the above and foregoing two pages contain a full, true and correct copy of Decree Dismissing Suit, in a cause entitled Board of Commissioners of Tensas Basin Levee District vs. Tensas Delta Land Co., Ltd., No. 694 on the docket of said court, as the original of same appears on file in this office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this 10th day of November, A. D. 1913.

[SEAL.] LEROY B. GULOTTA,
Clerk U. S. District Court, Western District of Louisiana.

42 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Order to Show Cause on Petition.

Extract from Minutes of April 18, 1914.

No. 2636.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA
vs.
Hon. ALECK BOARMAN, Judge U. S. District Court, Western District of Louisiana.

It is ordered by the Court that the petition herein is allowed to be filed, and let a copy of the same be served upon the Honorable Aleck Boarman, Judge of the Western District of Louisiana, with an order directing him to show cause in this court on the first day of our next term at Atlanta, Georgia, to-wit, on the first Monday in October, 1914, why the mandamus prayed for should not
43 issue.

Answer of Respondent Judge.

Filed October 5th, 1914.

44 United States Circuit Court of Appeals for the Fifth Circuit.

No. 2636.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA
versus
ALECK BOARMAN, Judge of United States District Court, Western District of Louisiana.

Answer of Respondent Judge.

The answer of Aleck Boarman, Judge of the District Court of the United States for the Western District of Louisiana, to the petition heretofore filed in the above entitled cause, upon the relation of the State of Louisiana, appearing by the Honorable Ruffin
45 G. Pleasant, Attorney General, and Harry P. Gamble, Assistant Attorney General, for writs of mandamus and certiorari, and in response to the order to show cause heretofore issued:

For answer unto said petition, I, said Aleck Boarman, Judge of said United States District Court, say:

I.

In the suit entitled Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited, being No. 694, in equity, of the docket of the United States District Court for the Western District of Louisiana, after the rendition of the decree in the Circuit Court of Appeals in No. 2446 of the docket of this court, wherein said Levee Board was appellant and said Land Company was appellee, the parties to said suit in the District Court compromised said suit by the payment by the Tensas Delta Land Company, Limited, to the Board of Levee Commissioners of the Tensas Basin Levee District, on the 11th day of July, 1913, of the sum of $100,000. This sum of $100,000 was paid by the Secretary of said Tensas Basin Levee Board to the Honorable Ledieux E. Smith, Treasurer of the State of Louisiana, and was passed to the credit of the Tensas Basin Levee District fund, as appears by the receipt of said treasurer, bearing date July 24, 1913, and by the certificate of said Ledieux E. Smith, bearing date July 31, 1913, which receipt and certificate appear in the transcript accompanying this return.

II.

Following said compromise, and on July 19, 1913, the Tensas Delta Land Company, Limited, defendant in said suit, presented a motion in said District Court, a certified copy of which is
46 annexed to said petition for mandamus and certiorari, marked "Exhibit A," in which motion it was suggested that

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the parties to said cause in said United States District Court for the Western District of Louisiana had compromised the issues therein involved for the sum of $100,000.

III.

Thereupon the Court ordered that the complainant in said cause, the Board of Levee Commissioners of the Tensas Basin Levee District, and Ruffin G. Pleasant, Attorney General, its counsel of record in said suit, do show cause, on the first day of the next term of said United States District Court, to be holden at Monroe, La., why said cause should not be dismissed at the complainant's cost, and it was further ordered that, until said motion could be heard, all further proceedings in said cause be stayed and the defendant be dispensed from obligation to file any answer to the complainant's bill and supplemental and amended bill.

IV.

Pursuant to said order to show cause issued by me in said suit No. 694, objections to the dismissal of said suit were filed in said United States District Court, of which the objections attached to the petition for mandamus and certiorari, and marked "Exhibit B," are a true copy. For a statement of the nature and contents of said objections, reference is made to said document Exhibit B. I deny that such objections were filed by the State of Louisiana, or in its name, or by its authority, but aver that said objections were filed by and in the name of "R. G. Pleasant, Attorney General, State of Louisiana, and Attorney of Record for Complainant," as appears by
47 reference to said Exhibit B. The term of said United States District Court, held at Monroe, Louisiana, next after the issuance of said order to show cause and the filing of said objections, began on October 20, 1913. I deferred the consideration of said motion to dismiss for an additional day and caused a telegram to be sent to the Honorable Attorney General, in order to give him full opportunity to be present and heard upon said motion. After hearing said motion I did, on the 21st day of October, 1913, enter a final decree in said cause No. 694, wherein and whereby it was ordered, adjudged and decreed that the said compromise entered into as aforesaid on the 11th day of July, 1913, between complainant and defendant, "be and the same is hereby recognized by this Court as having the effect of the thing adjudged, and as settling all the issues involved in this cause, and the said suit is therefore dismissed, as prayed for in said rule, at the cost of complainant," which decree appears by reference to a certified copy annexed to the petition for mandamus and certiorari, and marked "Exhibit C."

V.

I deny that the effect of said decree of dismissal of said suit was to ratify a fraud. I admit that it put an end to said cause. While it is true that the bill of complaint made charges of fraud, and that

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the Honorable Attorney General, in his written objections to the dis
missal of the suit, insisted that it was against public policy to sanc
tion the compromise of a fraud, neither the complainant nor th
Honorable Attorney General, in response to the order to show caus
why the suit should not be dismissed, made any showing before m
that there was any fraud or impropriety whatsoever in th
48 sale made by the Board of Levee Commissioners of th
Tensas Basin Levee District to the Tensas Delta Land Com
pany, Limited, as set forth in the bill of complaint. I deny tha
by the decree of dismissal I permitted the compromise of a frau
for a moneyed consideration. I admit that by such decree I per
mitted the compromise of the suit, notwithstanding the fact tha
charges of fraud were made in the bill of complaint, no evidenc
being produced before me showing or tending to show that suc
charges of fraud were in fact true; and I deny that a compromise o
suit thus effected is reprobated by law or equity, or that it shoul
not have been sanctioned by a court of justice.

VI.

I admit that the Board of Levee Commissioners of the Tensas
Basin Levee District was created by Act No. 59 of the Acts of the
General Assembly of the State of Louisiana, approved July 3, 1886,
and other acts amendatory thereto, and that, pursuant to said act,
said Board came into possession of the lands involved in said suit,
and that said lands were obtained by deed from the State of Louis
iana, in order to provide said Board with means to carry out the
purposes of the act and in order to furnish said Board with resources
to assist in building and maintaining within or without the State a
system of levees and other works of public improvement to aid said
Board in protecting from overflow property in said Tensas Levee
District and the property of lower proprietors in other districts be
tween the Tensas Basin Levee District and the Gulf of Mexico. I
deny that said Levee Board is merely the trustee or business manager
of the State in said matter, in such sense as to deprive said
49 Levee Board of the power of control or alienation of said
lands. While the Levee Board was created by the State and
is subject to the State's paramount authority, in that the State,
through its legislative body, may create or abolish said Board, in my
view said Levee Board is not subject, in the performance of its duties,
to the direction or control of the Attorney General, or any other
State officer, under the Act No. 59 of the acts of the General As
sembly approved July 3, 1886, or any other legislation that has
existed since the passage of that act. On the contrary, said act ex
pressly empowered said Levee Board to sell, mortgage, pledge or
otherwise dispose of the lands held by it, in such manner and at such
times and for such prices as to said Board seemed proper.

VII.

I admit that all of the lands sued for by said Board of Levee Com
missioners of the Tensas Basin Levee District in said suit No. 694

in equity, were lands deeded by the State of Louisiana to said Board, to enable it to carry out the purposes of said act, and consisted of lands which were originally granted by the Congress of the United States to the State of Louisiana, or of lands which were then or thereafter forfeited to the State or bought in by the State or sold to the State at tax sale for nonpayment of taxes, and, therefore, all of said lands were lands which, at the dates of deeding same over to the Levee Board, were the property of the State, or were or had been claimed to be the property of the State. I deny that any disposition of said lands by compromise of said suit affected pecuniarily the interests of the State as a sovereign in said lands, in a sum beyond $4,000,000, or any other sum. From the record in
50 said cause in the United States District Court I have no reason to believe that the lands which are the subject of said suit are worth $4,000,000, or anything approaching that sum. The authorities referred to in paragraph VII of the petition do not, in my judgment, have any bearing upon the power of the Levee Board to compromise said suit.

VIII.

I admit that on the 6th day of April, 1913, the Honorable Ruffin G. Pleasant, Attorney General, as aforesaid, did present in open court, in the City of Monroe, Louisiana, to me, as Judge of the United States District Court for the Western District of Louisiana, a petition of intervention and appeal from the judgment ratifying said compromise, and dismissing said suit No. 694, verified by the Attorney General, and an assignment of errors in behalf, as alleged, of the State of Louisiana, in said suit No. 694, entitled "Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited," offering at the same time to give bond according to law. Said petition of intervention and appeal and assignment of errors are in form as set out in paragraph VIII of the petition for mandamus and certiorari.

IX.

On the 6th day of April, 1914, I was holding a term of said United States District Court at Monroe, Louisiana, and in open court, upon consideration of the petition of intervention and appeal and assignment of errors, I refused to allow or grant to the Honorable Attorney General of the State of Louisiana, acting ostensibly in behalf of said State, authority to intervene in said cause No. 694, and refused to grant him an appeal from said decree of dis-
51 missal of said cause rendered in said District Court on the 21st day of October, 1913. Such refusal was for the following reasons:

First. The State of Louisiana is without legal interest in the subject-matter of this suit, and has no authority in its own name or right to carry on the litigation, and it was so specifically held by the Supreme Court of Louisiana in the cause entitled State vs. Tensas Delta Land Company, Limited, reported in 126 La. 59.

Second. Inasmuch as the State of Louisiana was not a party t the suit, it had no appealable interest or standing in a court o equity to ask for an appeal, even admitting, arguendo, that it ha the same time within which to appeal as that possessed by a part to the suit.

Third. The petition of the Honorable Attorney General, askin leave, in the name of the State of Louisiana, to intervene in the cause was one which, in my opinion, appealed to my discretion as Chan cellor, and in the exercise of that discretion I deemed it best to deny the petition, and this in particular in view of the fact that the State had already had its day in court and had been adjudged by the highest Court of its own sovereignty to be devoid of legal interest in the subject-matter of the litigation. The intervention being denied, it followed, in my opinion, as a logical consequence, that no right to appeal existed, and appeal was also denied.

Fourth. Independent of the previous decision of the State Court in the case in the 126th Louisiana, it is my view that the merely general nature and character of the interest alleged by the State in the subject-matter of the litigation are not such as to entitle
52 the State to appeal from the decree of dismissal of October 21, 1913, especially in view of the fact that such decree is based upon the consent of both parties to the record and the good faith of the members of the Levee Board in making the compromise is not questioned.

Fifth. The Honorable Attorney General of Louisiana did not show any authority to apply for leave to intervene or appeal, other than as arises from his office as Attorney General or his position as solicitor and of counsel for the Levee Board in the suit pending in said District Court; and, in my opinion, there existed in him no right or authority in either capacity to carry on the litigation or appeal the cause contrary to the wishes and best judgment of his client, the Board of Levee Commissioners of the Tensas Basin Levee District, which, for a valuable consideration, and upon mature deliberation, had seen fit voluntarily to compromise the same.

X.

For the reasons already stated, I am of opinion that the petitioner has no paramount and superior right as a sovereign State to intervene in said suit No. 694, and that it is not entitled, as a matter of law or equity, to appeal to this Honorable Court from said decree of October 21, 1913, ratifying said compromise, as aforesaid.

XI.

In my opinion no duty rests upon petitioner as a sovereign State to prosecute suits in behalf of her citizens and taxpayers, in order to see that they be not deprived of their property, except in the manner and form provided by law, and especially to carry on litigation for her citizens or taxpayers against or contrary to their will
53 or judgment. I deny that the action of the Court in ratifying said compromise and in refusing the petitioner an appeal

is taking her property without due process of law, or that she has a paramount interest therein.

XII.

I deny that the compromise entered into by and between the Board of Levee Commissioners of the Tensas Basin Levee District and the Tensas Delta Land Company, Limited, upon which the said decree of October 21, 1913, ratifying said compromise, was predicated, was the compromise of a fraudulent act. I deny that said Board of Levee Commissioners of the Tensas Basin Levee District, being a mere agent or trustee of the State, was without right or authority to compromise a fraud, and I deny that it did compromise a fraud to the detriment and injury of the citizens and taxpayers of the State of Louisiana and said petitioner. I deny that said compromise was a mere perpetuation of a fraud; and I deny that in permitting the Tensas Delta Land Company, Limited, defendant in said cause, to file its motion to dismiss said cause No. 694 from the docket of said court, based on said compromise, I permitted the defendant in said cause to come into court with unclean hands. I deny that I should not have taken cognizance of said motion and that I lent my aid to the parties to settle a matter which is reprobated by fraud. I allege, on the contrary, that the compromise aforesaid was the compromise of differences arising between the parties to said cause, in which fraud in the original sale was asserted by the Levee Board, and denied by the Land Company. This is shown by the bill of complaint filed by the Levee Board upon the one
54 side and the answer filed in opposition thereto by the Tensas Delta Land Company, Limited, in support of its demurrer. Said answer was duly verified by the Honorable F. G. Hudson, late of Monroe, Louisiana, now deceased, the agent of said Land Company, and specifically denies all fraud in said sale. I admit that, after the filing of the motion to dismiss the suit, the Honorable Attorney General of Louisiana filed objections to the granting of the motion to dismiss, but those objections did not purport upon their fact to be the objections or protest of the State of Louisiana. I deny that in granting said motion to dismiss I ratified a fraud by recognizing the compromise as having the effect of a thing adjudged, in violation of the rules of equity, and in violation of the rights of the State, or that the same was against public policy.

XIII.

I admit that the decree of dismissal is final as respects the Board of Levee Commissioners of the Tensas Basin Levee District, which is a party to said suit. In my opinion, it is not final as to the State of Louisiana, which is not a party to the suit and has no legal interest therein. I deny that by said decree the State of Louisiana has been denied relief which it can only obtain by and through the appeal sought to be obtained in said proceedings, and that said decree, unless reversed, and my refusal to grant an appeal therefrom, will cause the petitioner irreparable injury. I deny that by the

refusal of the Court to permit the petitioner to intervene in order to prosecute in said cause No. 694 an appeal from the final judgment of dismissal rendered in said cause ratifying said compromise the petitioner has been or will continue to be financially and ir-
55 reparably injured and aggrieved in a sum not less than $4,000,000, or any other sum; and I deny that the petitioner is entitled to intervene and appeal or should be allowed to intervene and appeal the said cause No. 694 to this Honorable Court, in order that said alleged errors may be corrected.

XIV.

If the petitioner is without remedy for the matters set forth in said petition, it is in my opinion because, as already held by the Supreme Court of Louisiana, it has no legal interest in the subject-matter; and I deny that the petitioner is entitled to invoke the interposition and authority of this Honorable Court for writs of mandamus and certiorari, as stated in paragraph XIV of said petition.

XV.

I was of opinion that no right of intervention ought to be given or properly could be given to the relator in the instant cause, and, hence, in the exercise of my judicial discretion, I denied the intervention prayed. I was further of opinion that the petitioner, not being a party to the cause or permitted to intervene herein, had no right of appeal. If in any case third persons not parties to the cause are entitled to intervene and appeal when such third persons allege and show that they have been aggrieved by the judgment rendered, that principle, in my opinion, has no application in the instant cause, for the reason that the petitioner in this suit has no legal interest in the subject-matter in controversy and its rights or interests are not determined by the decree of dismissal, and hence it is not aggrieved thereby. I submit that when no appeal lies the District Judge may refuse to allow it.

56 XVI.

I deny that petitioner's interests in the subject-matter of the aforesaid suit cannot be protected except by and through an appeal from the final decree ratifying said compromise and dismissing said suit. In my view the petitioner has no interest in the subject-matter of said suit, but, if it had any, an independent suit would, without doubt, lie for the protection thereof. This is the remedy to which the petitioner resorted in the case reported in the 126th Louisiana, and which was denied for want of interest by it in the subject-matter of the litigation.

XVII.

I deny that I refused petitioner relief which it could only obtain by and through an intervention and appeal in said cause, or that the action of the Court below was a final adjudication as to petitioner, and I respectfully submit that I committed no error to the prejudice

of petitioner, and I deny that I should have granted the appeal, leaving to this Honorable Court the question of the right of the petitioner thereto. I further submit that had I granted the appeal it would have been the duty of this Court on motion to dismiss the same, and that no injustice has been done the petitioner.

XVIII.

In refusing to permit petitioner to file its petition of intervention and appeal, assignment of errors and bond on appeal, I based my ruling in part on the decision rendered by the Supreme Court of Louisiana in State vs. Tensas Delta Land Company, Limited, reported in 126 Louisiana, 59. In my opinion that decision justifies me in refusing to allow petitioner the right of appeal from
57 the decree of dismissal rendered on motion of the Tensas Delta Land Company, Limited, in cause No. 694. It is true that said report will show that said proceeding was a suit by the State of Louisiana seeking to set aside the sale of these very same lands for the same alleged reasons set up in the bill of complaint filed in said cause No. 694 * * * by the Board of Levee Commissioners of the Tensas Basin Levee District.

XIX.

In my view, the opinion of the Supreme Court in said cause does not proceed merely upon the ground that the lands donated by the State to the Levee Board stood of record in the conveyance office in the name of the Levee Board, and hence that the Levee Board alone could bring the suit; but the opinion of the State Supreme Court recognizes that the Levee Board has the beneficial interest in the lands and the exclusive power to sell and dispose of the same. This seems apparent, indeed, from the language of the statute quoted on page 62:

"Said Board shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such times and for such prices as to said Board shall *deem* proper."

Upon the same subject the Supreme Court of Louisiana on pages 71-73 of the report said:

"Most assuredly and beyond all question the Legislature has divested the State absolutely of all beneficial interest in said lands and transferred same to the said Board of Levee Commissioners. It is impossible to read the said Act 59 of 1886, hereinabove quoted, and come to any other conclusion.

58 "The argument that said Board is nothing more than a mere agency or instrumentality of the State, and that therefore the State may sue in every case where the said Board might sue, contains a manifest non sequitur. Every city, town and parish of the State is a mere agency or instrumentality of the State; but no one would venture to say that the Attorney General could ignore the existence of these corporations and enforce, in the name of the State, any cause of action which any of them might have.

"The legislative control over corporations of the character of this

Levee Board is much more complete than over municipal corporations proper and parishes—it made them, and can at any time abolish them, so long as the obligations of their contracts are not thereby impaired—but these corporations have their existence and exercise their functions by and under the Constitution and statutes of the State, and so long as these established laws remain in force it is they which must regulate the property and other rights of said corporations and their modes of action, and the disposition of their property, and their rights to sue and to be sued. If one of these corporations has a right of action, the proper functionary to enforce same is the governing body of the corporation, and not the Attorney General, or the State. * * *

"We note, in conclusion, that the membership of this Levee Board can be changed at any time by the Governor without his having to assign any reason, and that, therefore, the Legislature has provided ample remedy for the protection of the people of the district, who are the real parties in interest."

So also in the opinion denying application for rehearing the Supreme Court of Louisiana says (p. 74 of the report):

"The Legislature vested the absolute title to the lands in controversy in the Board of Commissioners of the Tensas Levee
59 District, with full power to sell the same on such terms as the Board might deem proper. The Legislature also vested in said Board full power to sue and be sued, and to stand in judgment, in all matters relating to their gestion and trust. The Board of Commissioners could have brought the present suit to annul the alleged fraudulent sale and recover the lands. The Governor of the State, with his power of appointing and removing members of levee boards, can compel them to bring such suits as he may deem proper in the interests of levee districts.

"The General Assembly has the power at any time to authorize the Attorney General to institute actions for the use and benefit of the taxpayers and people of any particular levee district. But, as the General Assembly has vested the power to sue and be sued in the Board of Commissioners of the Tensas Levee District, and has vested no such co-ordinate power in the Governor or Attorney General, we are of the opinion that the institution of this suit in the name of the State is unauthorized."

It is true that in the opinion of the State Supreme Court are found the words quoted in paragraph XIX of the printed petition. Those words, in my view, have no bearing upon the question of the right or power of the Levee Board to compromise the suit. This is not a case where the Levee Board has fraudulently or improperly refused or omitted to take action; but it has in fact acted. In the exercise of its best judgment, and with much apparent deliberation, the Levee Board has seen fit to compromise the existing suit, and, in my opinion, it had full power and authority so to do. That the Levee Board in entering into the compromise acted in the utmost good faith, and as it deemed for the interest of the taxpayers and
60 inhabitants of the levee district, was not questioned in any showing made by the Honorable Attorney General before me.

XX.

I deny that the State ought to be permitted to prosecute this appeal because the Board of Levee Commissioners has failed in its duty to prosecute a suit which it clearly ought to prosecute; and I deny that it has compromised any matter to the detriment of petitioner; and I deny that for this reason the privilege of prosecuting said appeal should be extended to the State. In my view, the Levee Board, like any other plaintiff in a civil cause, is entitled to prosecute its suit or compromise the same on the best terms obtainable, as to it, under all the circumstances, may seem advantageous. I find nothing in Act No. 3 of the extra session of the Legislature of the State of Louisiana for the year 1910 which makes it the duty of the Attorney General to prosecute to final judgment a suit in which he appears as counsel for a levee board pursuant to the provisions of that act, despite the judgment of his client (the Levee Board) that it is for the best interests of the taxpayers and inhabitants of the Levee District to compromise the cause.

XXI.

In paragraph XXI of its petition the petitioner assumes that there was a fraudulent sale of lands made by the Levee Board in the year 1898, and that the Levee Board, as it existed in the year 1913, failed in its duty to prosecute a suit to recover the lands, and hence the conclusion is drawn that it is the duty of the State to intervene and protect its supposed interests and those of its inhabitants. No such facts as assumed in said paragraph were shown before me.

61 The facts as shown before me are set forth in the transcript which accompanies this return, and are also adverted to in paragraph XXIV and the succeeding paragraphs of this return.

XXII.

I deny that the compromise which was ratified by the decree rendered on the 21st day of October, 1913, was an acknowledgment that the said Tensas Delta Land Company, Limited, had no title to said lands, and I deny that the effect of such compromise is necessarily that of a sale. The decision of the Supreme Court of Louisiana, to which reference has already been made, recognizes that the Levee Board is invested with full powers to regulate and control its rights to sue. The provisions of Act No. 215 of the General Assembly of the State of Louisiana of 1908 will accurately appear upon reference thereto. I deny that said compromise was in reality a sale of the property and lands of said Levee Board and done by said Board in violation of said law, and that said Board, in consummating said compromise, went beyond and transcended the authority vested in it. In my opinion, said Levee Board, under the statutes creating it, was fully authorized to compromise the suit relating to the lands mentioned in said bill, and it was wholly unnecessary for said Levee Board, as a condition precedent to the compromise of said litigation,

to go through the forms of advertisement and sale set forth in paragraph XXII of the petition.

XXIII.

In my opinion the legal principles and authorities set forth in paragraph XXIII of the petition have no pertinency in the in-
62 stant cause. The act of compromise was not entered into for the purpose of carrying into effect the provisions of a previous illegal contract, but, as shown before me, was entered into in order to adjust all differences between the parties in a manner deemed by each more satisfactory than a continuance of litigation. I deny that the compromise was entered into as the result of a fraud practiced by the parties to the suit, or that it is incapable, for any reason, of being ratified by a court of justice.

XXIV.

The printed copy of the record in this cause, No. 2446, will show what took place in the District Court of the United States in the cause above entitled up to the time of the appeal from the decision of the District Court upon the demurrer to the bill of complaint. The later proceedings in the District Court are found in the transcript of record which accompanies this return, and which I hereby request may be taken as a part hereof. From the record thus made up it appears that in the year 1911 the Board of Levee Commissioners of the Tensas Basin Levee District brought a suit against the Tensas Delta Land Company, Limited, to set aside a sale of lands made in 1898 by the then Levee Board. The bill of complaint charged, among other things, fraud in the sale so made by the Levee Board to the Land Company. All charges of fraud or wrongdoing were denied by defendant under oath, by an answer filed in support of the demurrer, which answer appears on pages 54 to 68, inclusive, of the printed record in cause No. 2446, and was duly verified by the Honorable F. G. Hudson, late of Monroe, Louisiana, now deceased, who was then acting as the duly appointed legal agent of the defendant Tensas Delta Land Company, Limited. By the
63 decision of this Honorable Court it was directed that the demurrer be overruled, and, mandate being filed in the District Court, the cause stood for answer by the defendant and trial on the merits. On the 11th day of July, 1913, the Board of Levee Commissioners of the Tensas Basin Levee District, the complainant in said suit, and the Tensas Delta Land Company, Limited, the defendant therein, entered into a compromise of said suit in writing, as will appear upon reference to a copy of said compromise set forth in the transcript. It also appears from the transcript that said compromise was executed in behalf of the Levee Board by T. B. Gilbert, Sr., its president, pursuant to a resolution of the Board of Levee Commissioners of the Tensas Basin Levee District, passed in due form of law. By the terms of said compromise the Tensas Delta Land Company, Limited, paid to the Board of Levee Commissioners of the Tensas Basin Levee District the sum of $100,000, which

payment was made contemporaneously with the signing of said compromise, by delivery of draft for said sum, payable ten days after presentation. On the following day this draft was endorsed and paid over to the Honorable Ledieux E. Smith, Treasurer of the State of Louisiana, and the draft was duly paid and the amount placed to the credit of the Tensas Basin Levee District on the books of said State Treasurer, and on the 24th day of July, 1913, the Honorable Ledieux E. Smith duly receipted to the secretary of said Tensas Basin Levee Board for the aforesaid sum of $100,000.

XXV.

The act of compromise was made and entered into by the Board of Levee Commissioners of the Tensas Basin Levee District and the Tensas Delta Land Company, Limited, for the reason, as
64 expressed in said instrument, that each of the parties preferred the same to the hope of gaining balanced by the fear of losing in said litigation. The members of the Levee Board live within the levee district and presumably know the wishes, as well as the interests, of their constituents, the inhabitants of the district, and, as appears from the showing made before me on the motion to dismiss, the act of compromise was entered into by said Levee Board deliberately and in entire good faith. After the execution of the compromise on or about the 19th day of July, 1913, a certified copy of said act of compromise was filed in said United States District Court and motion was made by defendant Tensas Delta Land Company, Limited, to dismiss the suit. Order to show cause was issued by me on July 19, 1913, directed to the Board of Commissioners of the Tensas Basin Levee District and R. G. Pleasant, Attorney General, its counsel of record in said cause. A certified copy of the order to show cause was thereafter duly served and objections to the dismissal of the cause were filed by R. G. Pleasant, Attorney General of the State of Louisiana, and attorney of record for complainant, as hereinbefore set forth. Pursuant to said order to show cause, the Board of Levee Commissioners of the Tensas Basin Levee District by T. B. Gilbert, Sr., its president, filed its answer, wherein it admitted the settlement of the suit and the execution of the original act of compromise. In its said answer the Levee Board further admitted that the amount named in the act of compromise to be paid to it by the Tensas Delta Land Company, Limited, had been received and paid into the treasury of the State of Louisiana to its credit, and it prayed that said suit be forthwith dismissed at its cost, as agreed
in said act of compromise. Afterwards and on October 9,
65 1913, at a meeting of said Board of Levee Commissioners of the Tensas Basin Levee District, a resolution was duly passed ratifying and approving the action of T. B. Gilbert, Sr., president of said Board, in filing said answer in said United States District Court, and authorizing the said president of said Board to take any further action on behalf of said Board that might be found necessary for the dismissal of said suit brought by said Board against said Tensas Delta Land Company, Limited. It was further shown be-

fore me that on the 19th day of July, 1913, the secretary of said Levee Board, by order of said Board, instructed the Honorable R. G. Pleasant, Attorney General, as the attorney representing said Board, to dismiss or have dismissed the suit of said Board against said Tensas Delta Land Company, Limited, No. 694 on the docket of said United States District Court. Inasmuch as it was shown before me that said Levee Board, acting in unquestioned good faith, deemed it best to enter into the compromise aforesaid, and accepted and received the sum of $100,000 paid in consideration thereof, and desired to carry out its agreement made upon such consideration to dismiss the suit, it did not appear to me to accord with the principles of justice to direct the continuance of that litigation against the will of the parties concerned. I therefore dismissed the suit and subsequently denied the application of the Honorable Attorney General for leave to intervene and appeal in the name of the State. Thereby the State, if in any degree injured by my said ruling—which I believe it is not—is left to such remedy in an independent suit as the law may give therefor.

XXVI.

In the petition for mandamus and writ of certiorari, and in the petition filed for leave to intervene and appeal, there are
66 various allegations with respect to the supposed value of the lands which are the subject-matter of the litigation, and the supposed frauds alleged to have been perpetrated in the year 1898, in or about the sale thereof by the Levee Board to the Land Company. The answer filed by the defendant in support of its demurrer, and verified by the Honorable F. G. Hudson, legal agent of the defendant, tends to show that the valuations placed on said lands in the bill of complaint are greatly exaggerated. The answer so verified by Mr. Hudson not only denies all fraud in the sale, but states that the lands were at the time worth only $130,000. No evidence was produced before me upon the return of the order to show cause, or at any other time, tending to show that the present value of said lands is so great as stated in the petition for leave to intervene and appeal subsequently filed, or in the petition for mandamus and certiorari filed in this court. I refer to the answer in support of the demurrer filed by defendant, and verified by Mr. Hudson, not with any thought that it is possible to try upon this motion the truth or falsity of the charges made in the bill of complaint, but because, throughout the petition for mandamus and certiorari filed in this court, it is assumed that there was fraud in the sale, and that the Levee Board has failed in its duty to prosecute a suit to recover the lands, and that the intervention of the State is permissible for that reason. But no evidence supporting or tending to support these claims or assumptions was at any time produced before me; nor are the same just inferences from the facts which were shown before me. It does not appear from anything shown in the court below that the compromise was in any respect against the best interests of the Levee District, nor that the

Levee Board was wrong in its conclusion that the act of com-
67 promise, carrying with it the payment of $100,000, was fitly to be preferred to the hope of gaining, balanced by the fear of losing, in said litigation. From the act of compromise it appears that on a former occasion—viz., on or about the 9th day of July, 1903—an act of compromise with reference to the lands mentioned in the bill of complaint had been entered into by said Levee Board, acting through its president W. H. Holloman, under authority of resolution of said Board, [illegible] he 9th day of July, 1903, with the Tensas Delta Land Com[illegible] mited, and such former act of compromise was, by the act [illegible] promise of date July 11, 1913, ratified and confirmed. Under all the facts appearing in the record, it might well be deemed by the members of said Levee Board to be a prudent act, in the interest of their constituents, to enter into the compromise aforesaid, and thereby acquire for the levee district the benefits thereof, and it has at no time been claimed before me by the Honorable Attorney General, or by anybody else, that said members of the Levee Board acted otherwise than in the utmost good faith in the compromise so made by them. Nothing in the objections, petition or other papers submitted to me tended to show that any State official, or other person claiming to act in behalf of the State, objected to the dismissal of the suit, save the Honorable Attorney General, who had appeared in said cause as solicitor and of counsel for the Levee Board. As matter of law, it was my view that the Board of Levee Commissioners of the Tensas Basin Levee District, acting in good faith and for what it deemed the best interests of the taxpayers and inhabitants of the levee district, was entitled to compromise the litigation, and had full power and authority so to do, and hence I made the order of October 21, 1913, dismissing said suit, and subsequently denied the application of the
68 Honorable Attorney General, made on April 6, 1914, for leave to intervene and appeal.

XXVII.

I respectfully submit that neither the writ of mandamus nor the writ of certiorari lies to restrain or coerce the judicial discretion vested by law in me as Judge of said District Court of the United States for the Western District of Louisiana, and that the record in this cause justifies my act in dismissing relator's petition.

(Signed) ALECK BOARMAN,
Judge of the District Court of the United States for the Western District of Louisiana.

69 United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

TRANSCRIPT OF RECORD.

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Docketing Cause and filing Record	$5.00	
Transfer to Printed Calendar (2)	2.00	
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Issuing Certiorari	....	
Filing Briefs for Appellant	5.00	
Filing Briefs for Appellee	5.00	
Entering 4 Orders	.80	
Entering Submission	.20	
Entering Judgment	1.00	
Mandate	5.00	
Supervising, Indexing, etc	30.50	
Copy of Opinion with Mandate	5.00	
		$72.25
Cost Printing Record		92.25
		$164.50
Attorney's Docket Fee, Ruffin G. Pleasant, Attorney General		20.00
Total		$184.50

Credits.

By Appellant $170.00.
By Appellee $—.

Taxed by FRANK H. MORTIMER, *Clerk.*

73 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judge of the District Court of the United States for the Western District of Louisiana, Greeting:

Whereas, lately in the District Court of the United States for the Western District of Louisiana, before you, in a cause between Board of Levee Commissioners of the Tensas Basin Levee District, Com-

plainant, and Tensas Delta Land Company, Limited, Defendant, No. 694, In Equity, the following decree was made and entered, to-wit:

United States District Court for the Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS
vs.
TENSAS DELTA LAND CO., LTD.

This cause came on to be heard at the Shreveport Term, by agreement of parties, on the demurrers of the defendant, and was argued by counsel, whereupon, and on consideration thereof, it is ordered, adjudged and decreed that the demurrers of the defendant be sustained, the demands of the complainant be rejected, and the bill and amended bill of complaint be dismissed with costs.

It is further ordered, adjudged and decreed, that the application of the complainant to further amend its bill and amended
74 bill tendered on Monday, May 6th, 1912, at Alexandria, the dax fixed by the Court for the decision in this cause, be denied, and that said then tendered amendments be filed in the record to show what said tendered amendments are.

Thus done and signed in open court at Lake Charles, La., this 20th day of May, 1912.

ALECK BOARMAN, *Judge.*

as by the inspection of the transcript of record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Fifth Circuit, by virtue of an appeal sued out by Board of Levee Commissioners of the Tensas Basin Levee District agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand nine hundred and twelve, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby reversed, and the cause remanded to said District Court, with directions to allow the amendments offered, to overrule the demurrers, and to allow the defendant twenty days in which to answer and to proceed with the cause according to law and the rules in equity.

It is further ordered, adjudged and decreed that the Appellee, the Tensas Delta Land Company, Limited, be condemned to pay the cost of this cause in this Court, for which execution may be issued out of the said District Court.

April 8th, 1913.

75 You, therefore are hereby commanded that such execution and further proceedings be had in said cause — according to

the right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and thirteen.

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed: United States Circuit Court of Appeals, for the Fifth Circuit. No. 2446. November Term, 1912. Board of Levee Commissioners of the Tensas Basin Levee District, Appellant, vs. Tensas Delta Land Company, Ltd., Appellee. Mandate. Filed May 1, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

In the United States Circuit Court of Appeals, Fifth Circuit.

Number 2446.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT, Appellant,
vs.
TENSAS DELTA LAND COMPANY, LIMITED, Appellee.

Appeal from the District Court of the United States for the Western District of Louisiana.

76 Ruffin G. Pleasant, (Harry P. Gamble and Daniel Wendling on the brief,) Appellant.

Edgar H. Farrar (Henry Bernstein, on the brief), Appellee.

Before Pardee and Shelby, Circuit Judge-, and Shappard, District Judge.

SHELBY, *Circuit Judge*, delivered the opinion of the Court:

The main purpose of the bill in this case is to annul for fraud a sale of more than 800,000 acres of land made in November, 1898, by the plaintiff (appellant here), *and* corporation organized under the laws of Louisiana, for the sum of $130,000, to the defendant, an incorporated limited liability partnership organized under the laws of the State of Michigan, the members of which partnership are shown by the record to be citizens of other states than the State of Louisiana.

The averments show that there was gross fraud connected with the sale, which did not come to the knowledge of the plaintiff till the year 1909.

Before considering the controlling questions in the case, there are some matters relating to procedure, occurring before the new equity rules become effective, that require brief attention.

After the present suit was brought, the defendant, on December

16, 1911, filed a demurrer to the entire bill and an answer to the entire bill. Under the federal equity rules then in force, the effect of this was that the answer was a withdrawal or abandonment of the demurrer. Crescent City, etc., Co. v. Butchers', etc., Co., 12 Fed. 225 (by Judge- Pardee and Billings); Bryant Bros. Co. v. Robinson, 149 Fed. 321, — C. C. A. —, and authorities there cited. If the case had been left in this position, the plaintiff could have
77 filed a replication and the case would have stood for trial on its merits. But it did not choose to take that course; on the contrary, it moved to strike the answer from the files, and also agreed to have the case set down for hearing on the demurrer. This, as contended in this court by the defendant, was a waiver of the right to treat the answer as a withdrawal of the demurrer. The plaintiff, having elected and agreed to have the case set down for hearing and tried on the demurrer, cannot now be permitted to insist successfully that the demurrer was withdrawn by the filing of the answer. We must proceed, therefore, to consider the case presented by the bill and the demurrer to it.

This suit was brought October 7, 1911, by petition in a Louisiana state court, and was, by the defendant, duly removed to the District Court of the United States for the Western District of Louisiana. On motion of the defendant, an Order was there made to reform the pleadings so that they would conform to the federal equity rules, and the plaintiff asked leave that, in reforming the pleadings, it be permitted to file a supplemental amended bill, and leave to that effect was granted. The plaintiff thereupon reformed its pleading, (repeating the allegations contained in the petition filed in the state court and elaborating and enlarging the same. The defendant demurred to the bill, alleging that it was without equity, and stating several specific grounds of demurrer, which will hereinafter be stated and considered.

Before the decision of the case upon the demurrer, the plaintiff, on May 6, 1912, offered to further amend its bill with the view of remedying the alleged defects pointed out by the demurrers. The court below, on May 20, 1912, made an order sustaining the
78 demurrers and dismissing the bill with costs. The Court, at the same time, ordered that the amendments tendered be "filed in the record to show what said tendered amendments are," but no formal order was made allowing the amendments; on the contrary, they were denied. In a memorandum of reasons for judgment, the judge of the District Court said:

"It is clear to me that there is no case made on the original or amended bill, and that to allow the proffered amendments would not better the case as made in this bill and amended bill. The bill must therefore be dismissed. The proffered amendments will be filed and made part of the decree, in order that, in case of appeal, the appellate court may see why this court has thus exercised the discretion given it by law to permit or to refuse a complainant the rights to amend his bill."

Altho there was no order allowing the amendment, the court below evidently considered the amendment, and held that, if it was allowed

and the demurrers were interposed to the bill as amended, the proffered amendment making no better case, the demurrers would be sustained, and the bill, so amended, dismissed. The case has been presented in this court in the same way; that is, the question argued was whether or not the bill, if amended as offered, would have been subject to the demurrers. In the printed argument filed in this court for the defendant and appellee, it is said:

"We freely admit that, if the amendment tendered made a good bill, then the court ought to have permitted the amendments to be filed, and that this court, being informed as to what the proffered amendments were, can review the action of the court."

79 We are not concerned, therefore, with the case as stated by the petition in the state court, nor as stated under the order of the District Court to reform the pleading. We are concerned only with the question as to whether or not the bill, as offered to be amended May 6, 1912, before the decision of the demurrers, is subject to the demurrers which were sustained. In the following references to the bill, we refer to it as embodying the proffered amendments.

It is assigned that the court erred in sustaining each of the demurrers and in refusing to allow the amendments.

We shall proceed to consider each of the several grounds of demurrer, but not in their numerical order.

The eighth and ninth grounds are to the effect, (*a*), that the demand of the plaintiff to annul the deeds for fraud is barred by the prescription of one year, because it appears that the knowledge of the alleged fraud came to the plaintiff more than one year prior to the time when the suit was brought; and, (*b*), that the averments of the bill, whereby the plaintiff attempts to avoid the operation of the prescription of one year, are insufficient in law to prevent the operation of the limitation. These grounds are not well taken. They are abandoned, as shown by the brief for the appellee, from which we quote:

"Counsel for defendant conceded in the lower court, and now concedes here, that the prescription of one year applies only to actions to annul judgments obtained by fraud and not to actions to annul a sale for fraud."

It should be noted here that the demurrer is addressed to the whole bill. There is no demurrer to any separate part of the bill. Keeping that in mind, we consider the fourth and fifth

80 grounds of demurrer. They are to the effect (*a*), that the bill is without equity, because the plaintiff sues to recover the gross amount of the sale price of certain lands, with interest, and at the same time refuses to confirm and ratify said sale; and, (*b*), that the demand of the plaintiff to set aside said sale for lesion beyond moiety is barred, on the face of the bill, by the prescription of four years. Each of these grounds of demurrer, altho they are embraced in a demurrer addressed to the whole bill, relates to only a portion of the bill. If it were true that the bill was without equity to recover the gross amount received by the defendant for the portion of the land which it has sold, it might still contain equity as a suit

to annul the deeds for the lands which the defendant still retains. That ground of demurrer, therefore, should not be addressed to the whole bill, but only to that part of the bill to which it refers.

The demand of the plaintiff to avoid the sale for lesion beyond moiety is but one alternative claim and prayer of the bill, and if that remedy were barred, as claimed in the demurrer, by the prescription of four years, the bill might still be good as one to annul the deeds for fraud. That ground of demurrer, therefore, even if well taken to a part of the bill—if it had been so addressed—would not be sustained as a demurrer to the whole bill, if it appears that an equitable claim is properly asserted in other parts of the bill. The rule is, that, if a demurrer is addressed to the whole bill when it is a good defense to a part of the bill only, it must be overruled. The objection could only be sustained when it is presented as a demurrer to part of the bill. Stewart v. Masterson, 131 U. S. 151, 158; Story's Equity Pleadings, No. 443; I Foster's Federal Practice (3 Ed.), No. 107; Higinbotham vs. Burnet, 5 Johns. Ch., 184, (by Chancellor Kent). This rule is necessarily correct, because a chancellor would not dismiss a bill containing a just de-
81 mand properly asserted because it contained another demand not well founded.

The third ground of demurrer is to the effect that the bill is without equity because the plaintiff does not offer to do equity by offering to return the purchase price of the lands, with interest, and the taxes paid on the whole of the lands, and the necessary cost expended in preserving the lands, with interest, and the necessary cost of making sales of the lands, with interest. We are of the opinion that it was not necessary to make such tender. The bill shows that the defendant has sold part of the land which was conveyed to it by the plaintiff, and the plaintiff is seeking by this suit not only to annul the deeds to the part of the land still retained by the defendant, but also to recover more than $480,000 (less $130,000, the original purchase price), which was received by the defendant for the part of the lands which it had sold. Under the circumstances, a tender was not necessary, because the court could properly adjust the equities between the parties. State of Texas v. Snyder, 66 Texas, 687, 698, and cases there cited. The purpose of the rule requiring a tender in certain suits has its foundation in the purpose of courts of equity to protect all parties. Where the facts alleged show that, should the plaintiff obtain relief, the parties can be protected without the necessity of a tender, a tender need not be made. The bill contains the usual offer to do equity toward the defendant as the court may adjudge, and that is sufficient.

The second ground of demurrer is that the averments of conspiracy and fraud "are so vague, general, incomplete and indefinite that these defendants cannot be put upon their defense by any such vague and indefinite averments." Whether or not this ground of demurrer is well taken can, of course, only be answered
82 by an examination of the bill. It would unduly lengthen this opinion to repeat in detail the averments relating to the con-

spiracy and fraud. We can only indicate here what is elaborately stated in the bill.

The bill first shows the creation by Act of the General Assembly of Louisiana on July 3, 1886, of the plaintiff corporation, and of the Tensas Basin Levee District, composed of named parishes, and that the purpose of such legislation was for the raising of revenue to protect the lands therein from inundation, by the construction and maintenance of levees, and that the governor of Louisiana was authorized to appoint from each of the parishes located in the district one competent person, and that such appointees should constitute a Board of Levee Commissioners. The State of Louisiana was the owner of about 900,000 acres of land situated in the parishes of said levee district. It was provided that the title to these lands should pass to the Board of Levee Commissioners of the Levee District organized under the act, with authority in the Board to sell the lands for the best interest and advantage of the public, the proceeds to be used as provided by the act. The persons are named who became members of the Board under the act. Joseph W. Simms was appointed by the Board its land agent to find a purchaser for the lands, and in 1896 Simms made a contract with James W. Brown, engaging him to assist in finding a purchaser. It is alleged that in September, 1898, a fraudulent and collusive scheme was entered into between Brown and Simms and nine other persons, to-wit: James D. Lacey, S. Wood Beal, Thomas Hume, Ransome C. Luce, T. Stewart White, Thomas Friant, John C. Rugee, Joseph J. Tucker, and Anton G. Hodenpyl, all of whom are non-residents of the State of Louisiana, with certain members of the Board of Commissioners of the Tensas Levee District, and certain of its officers, agents and
83 employees, whose names are stated, whereby all the lands owned and situated in the district and under the control of the Board of Commissioners should be sold and delivered for a nominal consideration to a company or corporation to be organized for the purpose of carrying out the fraud; that, pursuant to this agreement, the defendant company was organized under the laws of the State of Michigan by named persons, who were parties to the conspiracy; that the defendant company obtained conveyances from the Levee Board, pursuant to this conspiracy, of lands worth at least $500,000, for which they paid only $130,000, $30,000 thereof being paid in cash, and the remainder in three equal payments, due in one, two and three years. To obtain these conveyances, the defendant company, or the persons who organized it, corruptly used $20,000 in cash and $18,750 of the capital stock of the defendant company. This sum and stock was given to members, officers and agents of the Levee Board and to certain citizens, the purpose being to influence a sufficient number of the members of the Board to vote for and to approve the sale. It is alleged that $3,000 of the cash and $3,750 of the stock in the defendant company was given to John P. Parker, the then President of the Board of Levee Commissioners, and that $500 was paid to each of two other members of the Board of Levee Commissioners, J. A. Hemler and R. E. Yancey, and that $7,500 in cash and stock amounting to $3,750 was paid,

for the purposes aforesaid, to R. B. Blanks, who afterwards becam President of the Board of Levee Commissioners, and that J. W Simms, the land agent of the Board, received $2,500 in cash an $3,750 in stock of the defendant company.

In brief, the bill shows with elaboration that the Levee Boar received these lands in trust for the public, and that th
84 persons who organized and composed the defendant compan obtained the lands by bribery from the Board for $130,00 when they were worth $500,000. It requires no argument or au thority to show that this constituted a fraudulent betrayal of trus on the part of the members of the Board who received the bribes an who caused the conveyances to be made, and, also, that the con spiracy to obtain the lands in this way, and to use the money an stock for the corrupt purpose, was a gross fraud on the part of thos who participated in the bribery and in the organization of the de fendant company which subsequently received the conveyances o the land. It seems to us that the facts are sufficiently alleged. The plaintiff cannot be required, and, in fact, would not be permitted, to embody in the bill all of the evidence which it expects to offer. It is sufficient if the details of a transaction of this kind are so succinctly and clearly stated as to notify the defendant of the charges made and of the facts on which the suit is based. No more is re quired even in a criminal prosecution. Greater fulness of statement would tend to obscure rather than to make clear.

We come now to the grounds of demurrer upon which the de fendant chiefly relies. The sixth and seventh grounds are to the effect, (*a*), that the demand of the plaintiff to set aside the sale for fraud is barred, on the face of the bill, by the prescription of ten years; and, (*b*), that the averments of the bill, whereby the plaintiff attempts to avoid the operation of the prescription of ten years, ac crued on the face of the bill, are insufficient to prevent the operation of the limitation. The bill shows that the plaintiff was first in formed of the fraud on October 13, 1909. The fraud was con summated by the Board of Levee Commissioners accepting the prop osition of the agent of the defendant company to purchase
85 the land, on November 4, 1898. It therefore appears on the face of the bill that a period of 11 years less 22 days elapsed between the date of the consummation of the fraud and the date when the plaintiff obtained knowledge of it. The defendant's con tention is that the limitation of ten years provided by the Louisiana Civil Code, Articles 2221 (2218) and 3544, is applicable to the case. It is contended by the plaintiff that the prescription of ten years is inapplicable, because the defendant did not acquire title in good faith, and other articles of the Civil Code and cases construing them are cited and relied on. As it does not change the result of our conclusion, we shall assume, for the purpose of the decision, that the contention of the defendant is correct—that the prescription of ten years is applicable.

One of the statu-es relied on by the defendant—Article 2221—provides that the limitation, in case of deception, begins to run only from the day on which the deception is discovered. The other statute

on which reliance is had—Article 3544—contains no provision as to when the limitation of ten years would begin to run.

In suits in equity where relief is sought on the ground of fraud, the authorities are without conflict that, where the ignorance of the fraud has been produced by affirmative acts of the guilty party in concealing the facts from the other, the statute of limitations will not bar relief, provided suit is brought within proper time after the discovery of the fraud. This doctrine favoring parties who seek relief against fraud goes further, and is applicable in cases where there are no affirmative acts of the guilty party in concealing the facts. Where the party injured by the fraud remains in ignorance of it without fault or want of diligence on his part, the bar of the statute does not begin to run until the fraud is discovered, tho there be no
86 special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the plaintiff. Bailey vs. Glover, 21 Wall. 342, 347. In Traer v. Clews, 115 U. S. 528, 537, it is held, citing Mr. Justice Miller's opinion in the foregoing case, that where fraud is the foundation of the suit and the fraud has been concealed, or is of such character as to conceal itself, the statute does not begin to run until the fraud is discovered or becomes known to the party suing or to those in privity with him. And it is said that "the case of Bailey v. Glover has never been overruled, doubted or modified by this court." This doctrine rests upon general and universal principles of justice; and it has been recognized and applied by the Louisiana courts from the earliest times to the present. See Hennen's, Breaux's and other digests of decisions of the Louisiana Supreme Court—title, "Prescription."

The seventh ground of demurrer, quoted above, means that the averments of the bill are insufficient to prevent the operation of the limitations; or, in other words, that the bill *above* laches or fails to show that the plaintiff exercised due diligence in the matter of discovering the fraud. This, the defendant contends, is the crucial point in the case.

To prevent the running of the prescription, it is true that the bill should show, not only that the plaintiff was ignorant of the fraud, but that it has not been guilty of laches, and has not failed to use reasonable diligence to ascertain all the facts. As to what it is necessary to allege in the bill and to prove on the trial in reference to diligence and want of negligence to avoid the operation of the statute of limitation, every case must "depend on its *one* peculiar circumstances, and there would be little profit in referring to the
87 very numerous cases to be found in the books on this subject." Stearns v. Page, 7 How. 819, 829.

We can only indicate here what are the "peculiar circumstances"—which are stated at length in the bill—tending to negative the charge of want of diligence. The plaintiff had no actual notice of the conspiracy and fraud till October 13, 1909. George Wesley Smith, an attorney, obtained the information from testimony in cases to which the plaintiff was not a party. One of the cases in which testimony was given was pending in a court in Michigan, the others in Louisiana. The plaintiff had no knowledge of, or connection with, the

cases, and only knew of the testimony disclosing the fraud by recei
ing the information from Smith. No fact appears in the bill tha
would naturally excite plaintiff's suspicion and so lead to an invest
gation. The fraud was committed with the active connivance of th
president and two members of the plaintiff Board, as it was the
organized. The members of the Board not participating in the frau
being in ignorance of it, are presumed to have had confidence in the
fellow members. Subsequent to the consummation of the fraud,
citizen, who also received a bribe to aid in the fraud, became a mem
ber and president of the Board.

In brief, it is elaborately shown by the averments of the bill tha
the fraud and conspiracy were of the kind that concealed them
selves under cover of negotiations and acts of sale and the apparentl
fair and open dealings of officers apparently discharging a publi
trust, while, in fact, they were secretly perpetrating a fraud.

The members of the Levee Board who participated in the fraud an
received the bribes, and the sales agent of the Board, Simms, wh
also received a bribe, of course knew of the existence of the frau
for they were participating in it. Notice to the plaintiff, or t
88 other members of the Board, is not to be presumed from th
knowledge of those who participated in the fraud. Ord
narily, notice to an agent is treated as notice to the principal, becaus
of the presumption that he will communicate the facts known to hi
to his principal. But, in a case like this, notice is not presumed t
have been communicated; on the contrary, the facts alleged her
create the presumption that the agent and the members of the Boar
who received the bribes, did not inform the plaintiff or the othe
members of the Board. McCaskill Co. v. United States, 216 U. S
504; First National Bank v. Tompkins, 57 Fed. 20 — C. C. A. —
Barnes v. Gaslight Co., 27 N. J. Eq. 33, 37; Innerarity v. Merchants
National Bank, 139 Mass. 332. Members of the Board not par
ticipating in the fraud are presumed to have been kept in ignorance
of it. It is common knowledge that transactions involving "grant
by public officials are strictly guarded in the guilty circle, and ar
only speedily discovered by the use of detectives and the dictograph

When it is said that a plaintiff must use reasonable diligence to dis
cover fraud, it does not mean that he must necessarily have used som
affirmative means, or taken some active steps, or begun an investiga
tion, for he might not have the slightest suspicion of the existence o
the fraud. The rule of diligence only means that the defrauded
party's ignorance must not be negligent and that he remains ignoran
without fault of his own. This necessarily follows from the un
doubted rule that a party defrauded is not affected by the lapse o
time, or by anything done or omitted to be done, so long as he re
mains, without any fault of his own, in ignorance of the fraud tha
has been committed. 2 Pomeroy's Eq. Jur. (3 Ed.), No. 917, and
authorities cited in note 2.

89 In this case, the principal person- receiving the bribes were
the president and two members of the Levee Board. They
and the sales agent, who also received a bribe, were in positions o
trust, and there is nothing in the record to show that the plaintiff
or members of the Board not participating in the fraud, had an

cause to suspect that they were engaged in the alleged conspiracy until the Board was notified of the fraud in 1909. It is alleged that the conspiracy and the receipt of the bribes were kept secret and "locked in the minds" of the guilty parties, and that the plaintiff was kept in ignorance of it.

The fiduciary relation that existed between the plaintiff Levee Board and its members and its land agent, Simms, was such that the plaintiff would naturally place confidence in them, and, in view of the relationship that existed between them, we are of the opinion that the plaintiff was not charged with the duty of making an investigation or inquiry to ascertain whether, in fact, a fraud had been committed, unless it had notice, or was chargeable with notice of the existence of some fact that would naturally excite suspicion.

This suit does not stand altogether like a suit between private parties. The plaintiff is a public corporation, charged with the management and sale of a vast area of real estate. It is not presumed that it could exercise, under the circumstances, the same degree of diligence in guarding against fraud as a private owner of real estate. United States v. Minor, 114 U. S. 223, 240. Unless the plaintiff's want of diligence is such as to clearly bar its right of action, the court should be reluctant to deprive it of relief on that ground, in view of the fact that the suit is by a plaintiff acting in a fiduciary capacity and suing for the benefit of the public before the rights of any third
90 party *has* attached which it is necessary to imperil by the suit. A defendant who has committed a fraud involving the corruption of persons occupying a place of trust, should not be permitted to profit by it on account of the negligence of the plaintiff, unless the facts of the case and the rules of equity inexorably require it.

We think the bill is sufficient to avoid the imputation of a want of diligence in discovering the fraud.

It clearly appears that the plaintiff acted promptly after the fraud was discovered. It is averred that a suit was speedily brought in the name of the State to annul the deeds, the plaintiff being advised that it should be brought in that way; that this case was finally decided by the Supreme Court of Louisiana against the plaintiff, a majority of the judges holding that the State could not maintain such suit, but that the proper party plaintiff was the Board of Levee Commissioners. Conforming to that opinion, the present action was instituted shortly after the final termination of the suit in the name of the State. The bill shows diligence in the prosecution of the suits to annul the deeds since the date of the discovery of the fraud.

It is assigned that the Court erred in refusing the plaintiff leave to amend. No question was made in the lower court, nor in this court, as to the amendment being a departure from the original bill. It was not denied that the amendment was proper; the contention and decision *was* that it was insufficient to confer equity. The court refused to allow it on the sole ground that, if it had been allowed, the bill would still have been without equity, and that it would have been proper to have sustained a demurrer to it as amended. The federal statute allowing amendments is liberal, and should be construed

liberally to promote trials on the merits. When a demurre
91 is sustained to a bill, the usual order is that the plaintiff hav
leave to amend. It is a general rule in the federal court that it is in the discretion of the court to allow or to refuse to allow an amendment. It is often held that this discretion will not be interfered with except in cases of a plain abuse of it. Where it is possible to avoid it, the court should never allow justice to be defeated and wrong to triumph by a mere mistake or unskillfulness in pleading. Notwithstanding the general rule that, in the absence of abuse the discretion of the court as to allowing amendments will not be interfered with by an appellate court, such courts have, in some instances, interfered and reversed decrees and remanded cases, with direction that the rejected amendments be allowed. Backus v. Brooks, 195 Fed. 452, — C. C. A. —; Lant vs. Manley, 75 Fed. 627, 635, — C. C. A. —. It is not necessary to consider this question further. The refusal of the learned judge in the court below to allow the amendment was based entirely upon his view that the amendment, if made, would still leave the bill without equity, and, in effect, he sustained the demurrers to the bill as amended, and framed the decree so as to submit the amendments to the appellate court. We are of the opinion, for reasons given in the foregoing discussion, that the bill, as offered to be amended, contained equity, and was not subject to the demurrers interposed, and, therefore, that the amendments offered should have been allowed.

In deciding the questions raised by the demurrers, we have assumed, as required by the rule, that the averments of fact in the bill are true. If the cause comes to trial on the merits, the defendant will not be prejudiced by what we have said, should the evidence show a different state of facts from that alleged.

92 The decree of the District Court is reversed and the cause remanded, with directions to allow the amendments offered, to overrule the demurrers, and to allow the defendant twenty days in which to answer and to proceed with the case according to law and the rules in equity. And it is so ordered.

(Original Filed April 8th, 1913.)

United States Circuit Court of Appeals for the Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing Sixteen pages numbered from 1 to 16: inclusive, contain a true copy of the Opinion of the Court, in the case of Board of Commissioners of the Tensas Basin Levee District, Appellant, versus Tensas Delta Land Company, Limited, Appellee, No. 2446, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 29th day of April, A. D. 1913.

[SEAL.] FRANK H. MORTIMER,
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

Endorsed: No. 2446 United States Circuit Court of Appeals, for the Fifth Circuit. Board of Levee Commissioners of the Tensas Basin Levee District. Appellant. Tensas Delta Land Company, Ltd. Appellee. Copy of Opinion. Filed May 1, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

93 United States District Court, Western District of Louisiana, Monroe Division.

No. 694.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT

vs.

TENSAS DELTA LAND COMPANY, LIMITED.

On Motion of the Board of Levee Commissioners of the Tensas Basin Levee District, Plaintiff herein, through its counsel, R. G. Pleasant, Attorney General of the State of Louisiana, and, on suggesting to the Court that on the 8th day of April, 1913, a Mandate issued in the above entitled and numbered cause out of the United States Circuit Court of Appeals, for the Fifth Circuit, at New Orleans, directed to this Honorable Court, reversing the judgment of this Honorable Court rendered in said above numbered and entitled cause on May 20th, 1912, and on suggesting that the said United States Circuit Court of Appeals for the Fifth Circuit, ordered the said cause remanded, with directions to allow the amendments offered by the Complainant in the District Court, to overrule the demurrers filed therein, and to allow defendant twenty days in which to answer, and to proceed with the said cause according to the law and the rules of equity;

And, upon further suggesting to the Court that mover desired that said Mandate and opinion be recorded and proper judgment entered in this Honorable Court;

It is ordered, adjudged and decreed, That said Mandate and opinion be recorded and that there now be judgment in favor of plaintiff and against the defendant in said action, overruling
94 the demurrers hereinbefore filed by defendant; that plaintiff's proffered amendments be filed as a part of its complaint in this suit, and that the defendant file its answer within twenty days.

Thus done, read and signed in open court at Shreveport, La., on this 3rd day of May, 1913.

ALECK BOARMAN, *Judge.*

Endorsed: No. 694 in Equity. United States District Court, Western District of Louisiana, Monroe Division. Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Ltd. Judgment to record mandate of Circuit Court of Appeals for the Fifth Circuit. Filed May 3, 1913. Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 3, Folio —.

United States District Court for the Western District of Louisian
at Monroe.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVE
DISTRICT
versus
TENSAS DELTA LAND COMPANY, LTD.

To the Honorable Alec Boarman, Judge of said Court:

The petition of the Tensas Delta Land Company, Ltd., defenda
in this cause, with due respect showeth:

That the United States Circuit Court of Appeals reversed th
Judgment and decree heretofore entered herein and remande
95 the cause to this Court with instructions to permit the com
plainant to file certain proffered amendments to its bill
complaint and requiring the defendant to answer the said bill withi
twenty (20) days; that your petitioners asked the United States Ci
cuit Court of Appeals to extend the time for the filing of this Answe
but the Court did not grant that request, but said that the who
matter was within the power of your Honor under the new Equit
Rules.

Now your petitioner avers that it is absolutely impossible for
to prepare a proper and sufficient answer to this cause within th
time allowed by the mandate of the United States Circuit Court
Appeals; that in order to prepare such an answer your petitione
will have to send its counsel to Grand Rapids, Mich., where all of i
books and papers are kept and go through said books and papers an
have prepared under their supervision:

1. A list of all the lands to which defendants obtained title unde
the deeds from the Levee Board.

2. A list of all the lands disposed of by defendant.

3. A statement of all the taxes paid upon the property while i
the possession of the defendants.

4. A statement of all of the expenditures made by the defenda
in preserving said property and in making sales of the lands i
question.

2.

That all of these items of expenses will have to be picked out
the general expense account and books of the defendant.

That in addition to this service counsel will have to examine th
records of certain litigations set up in the amended bil
96 which litigations were had in Monroe and in Grand Rapid
and also to investigate facts set up in the amended bill,
which defendants have no knowledge as they are res inter alios act
and that it would be impossible for counsel to do this work with du
respect to the interest of their client prior to the Rule Day in Augus
1913.

That there is no term of this Court at which said cause could be tried prior to October, 1913, and that the granting of the defendants' time until the Rule Day in August to prepare and file their answer in this cause would not in any manner delay the trial of this cause at the October Term.

Wherefore, petitioner prays that the annexed affidavits being considered, an order may be entered herein granting the defendants until the Rule Day in August, 1913 to file its answer to the Complainant's bill and amended bill herein filed, and petitioners will ever pray.

EDGAR H. FARRAR,
HENRY BERNSTEIN,
Sol'rs Def't.

STATE OF LOUISIANA,
Parish of Ouachita, City of Monroe:

Personally came and appeared before me, the undersigned authority, Henry Bernstein, who, being duly sworn, deposes and says that he is the Agent of the Defendant in the State of Louisiana, and that all of the officers of said Company are absent from this State: That he has read the foregoing petition and knows the
97 contents thereof and that the same is true to the best of his knowledge, information and belief.

HENRY BERNSTEIN.

Sworn to and subscribed before me this 10th day of May, A. D. 1913.

[SEAL.]

JNO. J. POTTS,
Notary Public.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Personally came and appeared before me, the undersigned authority, Edgar H. Farrar, who, being duly sworn, deposes and says that he is the senior counsel of the defendant herein; that he has read the foregoing petition and knows the contents thereof, and that all the facts and allegations therein stated are true to the best of his knowledge, information and belief; that this application is made in good faith and not for any purpose of delay, and is in fact made at his request and on his advice, he knowing full well the amount of time and labor that will be required in properly preparing the answer of the Defendant in this cause.

EDGAR H. FARRAR.

Sworn to and subscribed before me this 8th day of May, A. D. 1913.

[SEAL.]

ABRAHAM GOLDBERG,
Not. Pub.

98 *Order.*

This cause coming on to be heard at this time on the foregoing petition for an extension of the time for filing the answer, it is by the Court, upon consideration thereof, Ordered, Adjudged and Decreed as follows, to-wit:

That the Tensas Delta Land Company, Ltd., defendants herein, be granted until the rule day in August, 1913, to file its Answer to the Complainant's bill and amended bill herein filed.

Thus done in open court at Alexandria on this the 12th day of May, A. D. 1913.

ALECK BOARMAN,
United States Judge.

Endorsed: No. 694 in Equity. United States District Court for the Western District of Louisiana, at Monroe. Board of Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Ltd. Petition for extension of time to file answer, and order. Filed May 12th, 1913, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

U. S. District Court, Western District of Louisiana, at Monroe.

No. 694.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT,
vs.
TENSAS DELTA LAND COMPANY, LIMITED.

Now comes the defendant, the Tensas Delta Land Company, Ltd., and on suggesting to the Court that the final decree herein
99 entered dismissing the bill was reversed by the United States Circuit Court of Appeals and the cause remanded with instructions to permit the Complainant to file certain prof-erred amendments to its original and supplemental bill and ordering the defendant to file its answer to the said bills as amended within twenty days; and on further suggesting that this court on the application of the defendant extended the time for it to answer to the rule day in August, 1913; and on further suggesting to the court that by resolution duly adopted on the 11th day of July, 1913, duly confirmed by a notarial act duly passed before G. F. Purvis, Clerk of the 7th, Judicial District Court in and for the Parish of Richland, copies of which resolution and which notarial act are hereto annexed and made part of this motion, the parties to said cause have compromised the same and all the issues therein involved, and this defendant in execution of said compromise has paid to the complainant the sum of One Hundred Thousand Dollars ($100,000.00) and the said complainant in and by said resolution and notarial act of compromise has agreed to dismiss this cause from the docket of said court at its costs.

And on further suggesting to the Court that said compromise has the effect of the thing adjudged in favor of this defendant, and that there is no further need for any further proceedings in this cause and that defendant is by the said compromise relieved from any obligation to answer herein,

It is ordered by the Court that the Board of Commissioners of the Tensas Basin Levee District, complainant herein, and R. G. Pleasant Att'y General of the State of Louisiana, Attorney of Record of said complainant, do show cause on a day to be named by the
100 court why this cause should not be dismissed at the cost of the complainant.

And mover further prays that until this motion can be heard, all further proceedings herein be stayed and defendant be dispensed from complying with the order herein entered directing it to answer the bills and supplemental and amended bills of the complainant herein.

FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
HENRY BERNSTEIN,
Sol'rs.

Edgar H. Farrar being duly sworn deposes and says that he is one of the solicitors of the defendant, which is a non-resident corporation, that he has read the foregoing Motion and knows the contents thereof and that all the facts therein stated are true and that the copies of the resolution of the Board of Commissioners of the Tensas Basin Levee District of date July 11th, 1913, and of the notarial act of compromise between said Board of Commissioners of the Tensas Basin Levee District and the Tensas Delta Land Co. Ltd., the complainant and the defendant in the above entitled and numbered cause, are correct.

EDGAR H. FARRAR.

Sworn to and subscribed before me this 16th day of July, 1913.
[SEAL.] SCOTT E. BEER,
Notary Public.

Order.

The foregoing motion, and affidavit, and the exhibits thereto being considered,
101 It is ordered, That the complainant, the Board of Commissioners of the Tensas Basin Levee District, and R. G. Pleasant, Atty. General, its counsel of record herein, do show cause on the 1st day of the next term of this Court to be holden at Monroe, La., why this cause should not be dismissed at the complainant's cost; and it is further ordered that until this motion can be heard, all further proceedings in this cause be stayed and the defendant be dispensed from any obligation to file any answer herein to the complainant's bill and supplemental and amended bill.

July 19-1913.

ALECK BOARMAN,
United States District Judge for the Western District of Louisiana.

Copy. Copy. Copy.

STATE OF LOUISIANA,
Parish of Richland:

Before me, the undersigned authority, personally came and ap
peared T. B. Gilbert, Sr., President of the Board of Levee Commi
sioners of the Tensas Basin Levee District, a political corporatio
created by the laws of the State of Louisiana, and domiciled in th
town of Rayville, in the Parish of Richland, duly authorized an
fully empowered to act herein for and on account of and in the nam
of the Board of Levee Commissioners of the Tensas Basin Levee Di
trict aforesaid, by a resolution of said Board duly adopted in regula
session on the 11th day of July, A. D. 1913, a certified copy of sai
resolution under the corporate seal of said Levee Board being at
tached hereto and made a part of this act; and the Tensa
102 Delta Land Company, Limited, a limited liability partner
ship association, organized and created under the laws of th
State of Michigan, with its domicile and principal place of busines
in the City of Grand Rapids, in the County of Kent, in said State
represented herein by Henry Bernstein, its General Agent in th
State of Louisiana, who is duly authorized to act for and in its stea
and in its name in the matters herein set forth.

And the said appearers declared unto me, Notary, in the presenc
of the undersigned witnesses, that in order to put an end to the liti
gation now pending between them in the suit entitled "Board o
Levee Commissioners of the Tensas Basin Levee District versus Ten
sas Delta Land Company, Limited, being No. 694 on the docket o
the United States District Court in and for the Western District o
Louisiana, in Equity, and to forever end and set at rest all of the
matters and things set up and contained in the allegations of the
original and amended bills of complaint filed in said cause, and for
ever set at rest all questions relating to the validity of the titles of the
Tensas Delta Land Company, Limited, to the lands situated in the
Parishes of Ouachita, Morehouse, Caldwell, Catahoula, Franklin,
Richland, West Carroll and La Salle, in the State of Louisiana, pur
chased by it from the Board of Levee Commissioners of the Tensas
Basin Levee District on the 9th day of November, A. D. 1898, as ap
pears by the seven deeds of said date, on file and of record in each o
the seven Parishes above named (the Parish of La Salle having been
created since said transaction) and to finally adjust and settle all
disputes, differences and matters at issue between the Board of Leve
Commissioners of the Tensas Basin Levee District, and the said Ten
sas Delta Land Company, Limited, in any manner affecting
103 the sale of said lands or relating thereto, or affecting in any
manner the execution of said transaction and sale, and espe
cially the matters and things set forth in the bill of complaint, and
amended bills of complaint hereinabove referred to; they have agreed,
contracted and entered into the following Act of Compromise, which
each of them prefers to the hope of gaining, balanced by the fear o
losing, in said litigation, namely:

COPY BOUND C

The said Tensas Delta Land Company, Limited, agreed to pay to the said Board of Levee Commissioners of the Tensas Basin Levee District aforesaid, the sum of one hundred thousand and no/100 dollars, which payment is made contemporaneously with the signing of these presents, by delivery of draft for said sum, payable ten days after presentation.

In consideration of said payment, the receipt of which is hereby acknowledged, the Board of Levee Commissioners of the Tensas Basin Levee District agrees to dismiss, at its cost, the litigation and suit now pending and hereinabove referred to, being Suit No. 694 in Equity, on the Docket of the United States District Court in and for the Western District of Louisiana, entitled "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited" from the docket of said Court, and hereby authorizes the dismissal of said suit, to be done either in open court or on motion filed by the Attorney General of the State of Louisiana, or the Attorney of Record for Tensas Delta Land Company, Limited, and hereby ratifies, confirms and fully approves the title of Tensas Delta Land Company, Limited, to all of the lands specifically described in its seven deeds from said Board, set forth by Government subdivisions, by metes and bounds, or by tracts, and specially
104 ratifies, confirms, approves and recognizes its act of compromise heretofore made by it, acting through its President, W. H. Holloman, under authority of a resolution of said Board dated 9th day of July, 1903, with said Tensas Delta Land Company, Limited, and ratifies and confirms all acts by either of the parties thereto heretofore done or performed thereunder, it being expressly understood that this Act of Compromise on its part is supplementary to the act of compromise above referred to, and intended to forever settle all questions as to the insufficiency of said previously executed Act of Compromise.

Thus done, executed and signed on the date hereinabove written, in the presence of the witnesses whose names are hereunto subscribed, and me, Notary.

TENSAS DELTA LAND COMPANY, LIMITED,
By HENRY BERNSTEIN, *Agent.*
BOARD OF LEVEE COMMISSIONERS OF TENSAS LEVEE DISTRICT,
By T. B. GILBERT, SR., *President.*

Witnesses:
C. H. McHENRY.
W. S. PECK.

G. F. PURVIS,
Clerk 7th Dist. Court. [SEAL.]

Be it resolved by the Board of Levee Commissioners of the Tensas Basin Levee District that this Board accept the proposition of compromise of the litigation pending in the United States District Court
105 in and for the Western District of Louisiana, in which this Board is Plaintiff, and the Tensas Delta Land Company, Ltd., defendant, and that the President of the Board be and

LOSE IN CENTER

he is hereby authorized and instructed to execute and sign in the name of this Board an Act of Compromise, in words and figures as follows, to-wit:

STATE OF LOUISIANA,
Parish of Richland:

Before me, the undersigned authority, personally came and appeared T. B. Gilbert, Sr., President of the Board of Levee Commissioners of the Tensas Basin Levee District, a political corporation, created by the laws of the State of Louisiana, and domiciled in the town of Rayville, in the Parish of Richland, State of Louisiana, duly authorized and fully empowered to act herein for and on account of and in the name of the Board of Levee Commissioners of the Tensas Basin Levee District aforesaid, by a resolution of said Board, duly adopted in regular session on the 11th day of July, A. D. 1913, a certified copy of said resolution under the corporate seal of said Levee Board being attached hereto and made a part of this Act; and Tensas Delta Land Company, Limited, a limited liability partnership association, organized and created under the laws of the State of Michigan, with its domicile and principal place of business in the City of Grand Rapids, in the County of Kent, in said State, represented herein by Henry Bernstein, its General Agent in the State of Louisiana, who is duly authorized to act for and in its stead and in its name in the matters herein set forth.

And the said appearers declared unto me, Notary, in the presence of the undersigned witnesses, that in order to put an end to
106 the litigation now pending between them in the suit entitled "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited" being No. 694 on the docket of the United States District Court in and for the Western District of Louisiana, in Equity, and to forever end and set at rest all of the matters and things set up and contained in the allegations of the original and amended bills of complaint filed in said cause, and to forever set at rest all questions relating to the validity of the titles of Tensas Delta Land Company, Limited, to the lands situated in the Parishes of Ouachita, Morehouse, Caldwell, Catahoula, Franklin, Richland, West Carroll and La Salle, in the State of Louisiana, purchased by it from the Board of Levee Commissioners of the Tensas Basin Levee District on the 9th day of November, A. D. 1898, as appears by the said seven deeds of said date on file and of record in each of the seven Parishes above named (the Parish of La Salle having been created since said transaction) and to finally adjust and settle all disputes, differences and matters at issue between the Board of Levee Commissioners of the Tensas Basin Levee District and the said Tensas Delta Land Company, Limited, in any manner affecting the sale of said lands or relating thereto, or affecting in any manner the execution of said transaction and sale, and especially the matters and things set forth in the bill of complaint and amended bills of complaint hereinabove referred to; they have agreed, contracted and entered into the following Act of Compromise

which each of them prefers to the hope of gaining, balanced by the fear of losing, in said litigation, namely:

The said Tensas Delta Land Company, Limited, agrees to pay the said Board of Levee Commissioners of the Tensas Basin Levee District aforesaid, the sum of One Hundred Thousand and
107 no/100 dollars which payment is made contemporaneously with the signing of these presents, by delivery of draft for said sum payable ten days after presentation.

In consideration of said payment, the receipt of which is hereby acknowledged, the Board of Levee Commissioners of said Tensas Basin Levee District agrees to dismiss, at its cost, the litigation and suit now pending and hereinabove referred to, being Suit No. 694 in Equity, on the docket of the United States District Court in and for the Western District of Louisiana, entitled "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited" from the docket of said court, and hereby authorizes the dismissal of said suit, to be done either in open court or on motion filed by the Attorney General of the State of Louisiana, or the Attorney of Record for Tensas Delta Land Company, Limited, and hereby ratifies, confirms and fully approves the title of Tensas Delta Land Company, Limited, to all of the lands specifically described in its seven deeds from said Board, set forth by Goovernment sub-divisions, by metes and bounds or by tracts, and specially ratifies, confirms, approves and recognizes its act of compromise heretofore made by it, acting through its President, W. H. Holloman, under authority of a resolution of said Board, dated 9th day of July, 1903, with said Tensas Delta Land Company, Limited, and ratifies and confirms all acts by either of the parties thereto heretofore done or performed thereunder, it being expressly understood that this Act of Compromise above referred to, *and* intended to forever settle all questions as to the insufficiency of said previously executed Act of Compromise.

108 Thus done, executed and signed on the date hereinabove written, in the presence of the witnesses whose names are hereunto subscribed, and me, Notary.

TENSAS DELTA LAND COMPANY, LIMITED,
By HENRY BERNSTEIN, *Agent.*
BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT,
By T. B. GILBERT, SR., *President.*

Witnesses:
C. H. McHENRY.
W. S. PECK.

G. F. PURVIS,
Clerk 7th Dist. Court.

I certify the above and foregoing to be a true and correct copy of the original Resolution as adopted by the Board of Levee Commissioners of the Tensas Basin Levee District this day.

Given under my hand officially at Rayville, La., on this 11th day of July, A. D. 1913.

J. W. SUMMERLIN,
Secretary.

Endorsed: No. 694. U. S. Dist. Court, Western Dist. of La. Board of Commissioners of Tensas Basin Levee Dist. versus Tensas Delta Land Co., Ltd. Motion by Defendant & Order for Complainant to Show Cause at Monroe Oct. Term, 1913. Filed Jul- 22, 1913. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 3, Folio 136.

109 *Marshal's Return on Rule to Show Cause.*

U. S. Marshal's Return.—Marshal's Docket No. 1265 Jul- 23, 1913. Received this Writ at Shreveport, La., July 24, 1913, and executed at Shreveport, La., July 28, 1913, by delivering certified copy of this writ to The Attorney General for the State of Louisiana, R. G. Pleasants, in person.

B. INGOUF,
U. S. Marshal,
By J. M. GRIMMET,
Ch. Deputy.

Filed Jul- 28, 1913. Leroy B. Gulotta, Clerk, U. S. District Court West. Dist. of Louisiana. Entered Folio 248.

United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

In the Matter of Rule to Show Cause, Dated July 19th, 1913, Returnable at Monroe, Louisiana, First Day April Term, 1914.

Acceptance of Service by Board of Commissioners of Tensas Basin Levee District.

"Service of the above Rule acknowledged on this the 31st day of July, A. D. 1913.

T. B. GILBERT, SR.,
President of the Board of Levee Commissioners of the Tensas Basin Levee Board."

Filed Aug. 4, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

110 United States District Court for the Western District of Louisiana.

No. 694.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT

vs.

TENSAS DELTA LAND COMPANY, LIMITED.

Now into Court comes the Board of Levee Commissioners of the Tensas Basin Levee District, through its present President in propria persona, made defendant in the Rule to Show Cause why the pending litigation should not be dismissed at plaintiff's costs, for the reason that the same has been compromised, as is fully set out in the original certified copy of the original act of compromise between the plaintiff and defendant herein on July 11, 1913, — makes answer to said rule as follows, to-wit:

It admits the settlement of the said suit, the matters and things set out in its original and amended bills of complaint filed herein, by compromise; it admits the execution of the original act of compromise referred to in said motion to dismiss and now affirms the same and consents to the final dismissal of said cause at its own cost as fully agreed and set forth therein; and it further admits that the amount named in the act of compromise to be paid to it by the Tensas Delta Land Company, Limited, has been received and paid into the Treasury of the State of Louisiana to its credit, as is more fully shown by duplicate receipt from the Honorable Ledieux E. Smith, Treasurer of the State of Louisiana, which is hereto attached and made a part hereof.

Further answering, the Board of Levee Commissioners of the Tensas Basin Levee District shows unto this Honorable Court
111 that it has apprized its attorney of record of the said settlement by compromise and it presents and files this its answer by and through its President in proper person, and prays that said cause and suit be forthwith dismissed at its cost, as is set out and agreed to in said act of compromise. For all orders and general and equitable relief.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT.
By T. G. GILBERT, SR., *President.*

Treasurer State of Louisiana.

No. 5132. BATON ROUGE, July 24, 1913.

Received of J. W. Summerlin, Secretary, Tensas Basin Levee District—one hundred thousand xx/100 dollars, being for amount derived from compromise made of the suit of the Tensas Basin Levee Board against The Tensas Delta Land Company, Limited.

Texas Basin Levee District Fund.

[SEAL.]

LEDIEUX E. SMITH,
Treasurer State of Louisiana.

Duplicate.
$100,000.00.

112 Filed Aug. 5, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

Endorsed on side of receipt: Filed in evidence Oct. 21-1913 Marked Exhibit 3 Leroy B. Gulotta, Clerk U. S. District Court W. D. La.

Endorsed: No. 694. In Equity. United States District Court Western District of Louisiana. Board of Commissioners of Tensas Basin Levee District vs. Tensas Delta Land Co., Ltd. Answer of Board of Commissioners of Tensas Basin Levee District to Rule Filed Aug. 5, 1913. Leroy B. Gulotta, Clerk, U. S. District Court West. Dist. of Louisiana.

United States District Court, Western District of Louisiana, Monroe Division.

No. 694.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

Now comes R. G. Pleasant, Attorney General of the State of Louisiana, and the attorney of Complainant in the above numbered and entitled suit, and, in answer to the order of the Court to show cause why this suit should not be dismissed and further proceedings stayed because of an alleged agreement entered into between the complainant and the defendant herein, avers that said agreement should not be recognized, nor this suit dismissed, for the following reasons:

First, the said suit is based upon a fraudulent sale of
113 nearly 900,000 acres of land belonging to the complainant and the said fraud vitiates the contract of sale.

Second, a fraudulent sale of public lands cannot be ratified and approved by a subsequent agreement between the vendor and the vendee. Only a new legal and honorable sale, for an adequate consideration, can operate a transfer of said property. The ratification of a fraud is no more legally binding than the perpetration of the original fraud itself, and no government, governmental agency or subdivision, or court, can justify the one nor condone the other. This results not only from the positive expressions of the law, not only because it is contra bonos mores and against public policy but also because it is inherently one of the fundamental objects of government to prevent and punish fraud, and especially fraud against the sovereign. Government and fraud are basically antagonistic. Either fraud must be condemned and government upheld or fraud upheld and government abandoned.

The motion to dismiss this suit states that the differences between the parties thereto have been settled and compromised by the payment of $100,000 by defendant to complainant. The only point in dispute was the question of fraud, all others having been abandoned

luring the progress of the case, as shown in the judgment of this Honorable Circuit Court of Appeals and by admission of complaint's counsel in open court. The question compromised, therefore, was that of fraud, and nothing else, and the court should not favor wrong instead of right by dismissing a suit of which it has full and complete jurisdiction.

Third, complainant should not be permitted to use the court and its processes for the purpose of condoning and compromising fraud for money.

114 Fourth, the Attorney General cannot dismiss this suit without express authority from the Governor of the State of Louisiana, so to do for the reason that his right to represent complainant herein and prosecute this suit was conferred upon him by the Governor under the provisions of Act No. 3 of the Extra Session of the General Assembly for the year 1910, and said right has never been withdrawn; that the Attorney General is not answerable to the complainant for his management of this suit; nor is he bound to dismiss same at the request of said complainant; that the effect of said Act of the legislature is to place the Governor in supreme charge of this and similar suits in the event he chooses to proceed under the Act in any particular suit; that the Attorney General is directly responsible to him, and to him alone; that it was the intention of the legislature, in passing the statute above cited, to give to the Governor, and through him, to the Attorney General, the control of suits of this character, and on account of this control, prevent the compromise of the public's rights and interests, such as the Board of Commissioners of the Tensas Basin Levee District has attempted to do in the present instance; that the complainant cannot compromise this suit, nor the court dismiss it, without the Governor's consent in any event.

Wherefore, respondent prays that defendant's motion to dismiss be denied, that the agreement upon which it is based be disregarded, that defendant be ordered to file its answer to the complainant immediately, and that the trial of this case on the merits be proceeded with without delay.

Further prays for all necessary orders and general and equitable relief.

R. G. PLEASANT,
Attorney General State of Louisiana and
Attorney of Record for Complainant.

115 R. G. Pleasant, being duly sworn, deposes and says that he is the Attorney General of the State of Louisiana, and the Attorney of Record for the Board of Commissioners of the Tensas Basin Levee District, Complainant in the foregoing entitled and numbered suit; that he prepared the foregoing answer to the order to show cause why the said suit should not be dismissed, and knows the contents thereof; that all of the facts stated in said answer are true and correct; and that the matters of law therein recited are applicable and correct to the best of his knowledge and belief.

R. G. PLEASANT.

Sworn to and subscribed before me this 6th day of October, 1913 at the City of Shreveport, Parish of Caddo, Louisiana.

[SEAL.] E. C. JACKSON,
Deputy Clerk U. S. District Court.

Endorsed: No. 694. In Equity. United States District Court, Western District of Louisiana. Board of Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd. Answer to rule to show cause Filed Oct. 6, 1913, Leroy B Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

116 United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
VS.
TENSAS DELTA LAND COMPANY, LTD.

Note of Evidence Taken on Trial of the Motion and Rule to Show Cause Why This Suit Should Not Be Dismissed on the Compromise of the Parties to the Suit.

Defendant, Plaintiff in Motion to Dismiss, offers a certified copy of the act of compromise between complainant, Board of Commissioners of Tensas Basin Levee District, and the defendant, Tensas Delta Land Company, Limited, together with resolution of the Board of Commissioners of said Levee District authorizing the same, all of which is of date July 11, 1913.

Document filed and marked Exhibit "1."

Offers certified copy of the letter from J. W. Summerlin Secretary of the Tensas Basin Levee Board to Hon. R. G. Pleasants, Attorney General of State of Louisiana, of date July 19th, 1913, notifying said Attorney General of the compromise entered into between the Board of Commissioners of the Tensas Basin Levee District and the Tensas Delta Land Company, Limited, of Suit No. 694 on the Equity Docket of the United States District Court in and for the Western District of Louisiana, and requesting said counsel to dismiss said cause at complainant's cost.

Document filed and marked Exhibit "2."

117 Offers the official duplicate receipt of the Honorable Le Doux E. Smith, Treasurer of the State of Louisiana, No. 5132, of date July 24, 1913, acknowledging receipt from J. W. Summerlin, Secretary of said Levee Board, of the one hundred thousand ($100,000.00) dollars, amount derived from compromise made of the suit of the Board of Commissioners of Tensas Basin Levee District versus Tensas Delta Land Company, Limited, and placed to the credit of the Tensas Basin Levee District fund.

Document filed and marked Exhibit "3."

Offers certified copy of the Treasurer of the State of Louisiana of receipt of draft on Tensas Delta Land Company, Limited, for said

one hundred thousand ($100,000.00) dollars, when paid to be credited to Tensas Basin Levee District, of date July 12, 1913.

Document filed and marked Exhibit "4."

Offers in evidence certified copy of the resolution of the Board of Commissioners of the Tensas Basin Levee District, of date July 14, 1910, authorizing its attorney, M. C. Thompson, in connection with the Attorney General of the State, to prepare and bring this suit.

Document filed and marked Exhibit "5."

Offers certified copy of Resolution of the Board of Commissioners of the Tensas Basin Levee District, of date October 9, 1913, ratifying, approving and confirming the act of the Honorable T. B. Gilbert, Sr., its President, in filing its Answer to the Rule to Show Cause why this suit should not be dismissed, and joining the defendant in the application to dismiss the same, and to have the compromise herein referred to recognized, said Answer being filed of date August 5th, 1913, which said resolution is filed and marked Exhibit "6."

118 Offers by reference thereto and with leave to substitute a certified copy in the record therefor, Act No. 69 of the Legislative Acts of the State of Louisiana of the year 1886, creating the Board of Commissioners of the Tensas Basin Levee District of the State of Louisiana, same filed by reference.

Offers by reference, and with leave to substitute certified copy therefor, Act No. 77 of the General Assembly of the State of Louisiana for the year 1888 amendatory of the last named above act, creating the Board of the Levee Commissioners of the Tensas Basin Levee District and granting certain lands of the State of Louisiana to the said Levee Board and providing the manner in which the same shall be transferred by the State of Louisiana, through the Auditor and Register of the State Land Office to the said Board of Commissioners of the Tensas Basin Levee District, and providing that when such transfers and conveyances are made, the same shall vest complete, perfect and absolute title together with possession of said lands in said Board, and giving and granting said Board full and complete authority of disposition by sale, mortgage or otherwise over said lands.

Same filed and marked by reference.

Offers Act No. 3 of the Special Session of the Legislature of the State of Louisiana for the Year 1910 by reference thereto, with leave to substitute certified copy thereof, being Act making the duty of the Attorney General of the State of Louisiana, when so requested by the Governor of the State of Louisiana, to represent the said State or any other of its political subdivisions or Boards in any litigation over any lands belonging to said State of said Boards in any of the Courts of this State.

Same filed by reference thereto.

119 Evidence closed.

Endorsed: No. 694. U. S. Dist. Court for the Western District of Louisiana. Board of Levee Commissioners of Tensas Basin Levee

Dist. vs. Tensas Delta Land Co. Ltd. Note of Evidence on Rule to Show Cause Why Suit Should Not Be Dismissed. October 21, 1913. Monroe, La. Filed Oct. 21, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

EXHIBIT 1.

STATE OF LOUISIANA,
Parish of Richland:

Before me, the undersaigned authority, personally came and appeared T. B. Gilbert, Sr., President of the Board of Levee Commissioners of the Tensas Basin Levee District, a political corporation created by the laws of the State of Louisiana, and comiciled in the Town of Rayville, in the Parish of Richland, State of Louisiana, duly authorized and fully empowered to act herein for and on account of and in the name of the Board of Levee Commissioners of the Tensas Basin Levee District, aforesaid, by a resolution of said board duly adopted in regular session on the 11th day of July, A. D. 1913, a certified copy of said Resolution under the corporate seal of said Levee Board being attached hereto and made a part of this act; and Tensas Delta Land Company, Limited, a limited liability partnership association, organized and created under the laws of the State of Michigan, with its domicile and principal place of business in the City of Grand Rapids, in the County of Kent, in said State, represented herein by Henry Bernstein, its General Agent in the
120 State of Louisiana, who is duly authorized to act for and in its stead and in its name in the matters herein set forth.

And the said appearers declared unto me, Notary, in the presence of the undersigned witnesses, that in order to put an end to the litigation now pending between them in the suit entitled "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited," being No. 694 on the docket of the United States District Court in and for the Western District of Louisiana, in Equity, and to forever end and set at rest all of the matters and things set up and contained in the allegations of the original and amended bills of Complaint filed in said cause, and to forever set at rest all questions relating to the validity of the titles of Tensas Delta Land Company, Limited, to the lands situated in the Parishes of Ouachita, Morehouse, Caldwell, Catahoula, Franklin Richland, West Carroll and La Salle, in the State of Louisiana, purchased by it from the Board of Levee Commissioners of the Tensas Basin Levee District on the 8th day of November, A. D. 1898, as appears by the seven deeds of said date on file and of record in each of the seven Parishes above named, (the Parish of La Salle having been created since said transaction), and to finally adjust and settle all disputes, differences and matters at issue between the Board of Levee Commissioners of the Tensas Basin Levee District and the said Tensas Delta Land Company, Limited, in any manner affecting the sale of said lands, or relating thereto, or affecting in any manner the execution of said transactions and sale, and especially the ma

ters and things set forth in the Bill of Complaint and amended bills of complaint hereinabove referred to: They have agreed, contracted and entered into the following Act of Compromise, which
121 each of them prefers to the hope of gaining, balanced by the fear of losing, in said litigation, namely:

The said Tensas Delta Land Company, Limited, agreed to pay to the said Board of Levee Commissioners of the Tensas Basin Levee District, aforesaid, the sum of One Hundred Thousand and no/100 ($100,000.00) Dollars, which payment is made contemporaneously with the signing of these presents, by delivery of draft for said sum payable ten days after presentation.

In consideration of said payment, the receipt of which is hereby acknowledged, the Board of Levee Commissioners of the Tensas Basin Levee District agrees to dismiss, at its cost, the litigation and suit now pending and hereinabove referred to, being Suit No. 694 in Equity, on the docket of the United States District Court in and for the Western District of Louisiana, entitled, "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited," from the docket of said Court, and hereby authorizes the dismissal of said suit, to be done either in open court or on motion filed by the Attorney General of the State of Louisiana, or the Attorney of record for Tensas Delta Land Company, Limited, and hereby ratifies, confirms and fully approves the title of Tensas Delta Land Company, Limited, to all of the lands specifically described in its seven deeds from said Board, set forth by Government subdivisions, by metes and bounds or by tracts, and specially ratifies, confirms, approves and recognizes its Act of Compromise heretofore made by it, acting through its President, W. H. Holloman, under authority of a resolution of said Board, dated 9th day of July, 1903, with said Tensas Delta Land Company, Limited, and ratifies and confirms all acts by either of the parties thereto heretofore
122 done or performed thereunder, it being expressly understood that this Act of Compromise on its part is supplementary to the Act of Compromise above referred to, and intended to forever settle all questions as to the insufficiency of said previously executed Act of Compromise.

Thus done, executed and signed on the date hereinabove written in the presence of the witnesses whose names are hereunto subscribed, and me, Notary.

TENSAS DELTA LAND COMPANY, LTD.,
By HENRY BERNSTEIN, *Agent.*
BOARD OF LEVEE COMMISSIONERS OF
TENSAS BASIN LEVEE DISTRICT,
By T. V. GILBERT, *President.*

Witnesses:
C. H. McHENRY.
W. S. PECK.

G. F. PURVIS,
Clerk of Court.

STATE OF LOUISIANA,
Parish of Richland:

Before me, the undersigned authority, personally came and appeared T. B. Gilbert, Sr., President of the Board of Levee Commissioners of the Tensas Basin Levee District, a political corporation created by the laws of the State of Louisiana, and comiciled in the Town of Rayville, in the Parish of Richland, State of Louisiana, duly authorized and fully empowered to act herein for and on account of and in the name of the Board of Levee Commissioners of the
123 Tensas Basin Levee District, aforesaid, by a resolution of said board duly adopted in regular session on the 11th day of July, A. D. 1913, a certified copy of said Resolution under the corporate seal of said Levee Board being attached hereto and made a part of this act; and Tensas Delta Land Company, Limited, a limited liability partnership association, organized and created under the laws of the State of Michigan, with its domicile and principal place of business in the City of Grand Rapids, in the County of Kent, in said State, represented herein by Henry Bernstein, its General Agent in the State of Louisiana, who is duly authorized to act for and in its stead and in its name in the matters herein set forth.

And the said appearers declared unto me, Notary, in the presence of the undersigned witnesses, that in order to put an end to the litigation now pending between them in the suit entitled "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited," being No. 694 on the docket of the United States District Court in and for the Western District of Louisiana, in Equity, and to forever end and set at rest all of the matters and things set up and contained in the allegations of the original and amended bills of Complaint filed in said cause, and to forever set at rest all questions relating to the validity of the titles of Tensas Delta Land Company, Limited, to the lands situated in the Parishes of Ouachita, Morehouse, Caldwell, Catahoula, Franklin, Richland, West Carroll and La Salle, in the State of Louisiana, purchased by it from the Board of Levee Commissioners of the Tensas Basin Levee District on the 8th day of November, A. D. 1898, as appears by the seven deeds of said date on file and of record in each of the seven parishes above named, (the parish of La Salle having been created since said transaction), and to finally adjust and settle all dis-
124 putes, differences and matters at issue between the Board of Levee Commissioners of the Tensas Basin Levee District and the said Tensas Delta Land Company, Limited, in any manner affecting the sale of said lands, or relating thereto, or affecting in any manner the execution of said transactions and sale, and especially the matters and things set forth in the Bill of Complaint and amended bills of complaint hereinabove referred to: They have agreed, contracted and entered into the following Act of Compromise, which each of them prefers to the hope of gaining, balanced by the fear of losing, in said litigation, namely:

The said Tensas Delta Land Company, Limited, agreed to pay to the said Board of Levee Commissioners of the Tensas Basin Levee

District, aforesaid, the sum of One Hundred Thousand and no/100 ($100,000.00) Dollars, which payment is made contemporaneously with the signing of these presents, by delivery of draft for said sum payable ten days after presentation.

In consideration of said payment, the receipt of which is hereby acknowledged, the Board of Levee Commissioners of the Tensas Basin Levee District agrees to dismiss, at its cost, the litigation and suit now pending and hereinabove referred to, being Suit No. 694 in Equity, on the docket of the United States District Court in and for the Western District of Louisiana, entitled, "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited," from the docket of said Court, and hereby authorizes the dismissal of said suit, to be done either in open court or on motion filed by the Attorney General of the State of Louisiana, or the Attorney of record for Tensas Delta Land Company, Limited, and hereby ratifies, confirms and fully approves the title of Tensas Delta Land Company, Limited, to all of the lands specifically
125 described in its seven deeds from said board, set forth by Government subdivisions, by metes and bounds or by tracts, and specially ratifies, confirms, approves and recognizes its Act of Compromise heretofore made by it, acting through its President, W. H. Holloman, under authority of a resolution of said Board, dated 9th day of July, 1903, with said Tensas Delta Land Company, Limited, and ratifies and confirms all acts by either of the parties thereto heretofore done or performed thereunder, it being expressly understood that this Act of Compromise on its part is supplementary to the Act of Compromise above referred to, and intended to forever settle all questions as to the insufficiency of said previously executed Act of Compromise.

Thus done, executed and signed on the date hereinabove written in the presence of the witnesses whose names are hereunto subscribed, and me, Notary.

TENSAS DELTA LAND COMPANY, LTD.,
By HENRY BERNSTEIN, *Agent.*
BOARD OF LEVEE COMMISSIONERS OF
TENSAS BASIN LEVEE DISTRICT,
By T. V. GILBERT, *President.*

Witnesses:
C. H. McHENRY.
W. S. PECK.

G. F. PURVIS,
Clerk of Court.

I hereby certify the above and foregoing to be a true and correct copy of the Original Resolution as adopted by the Board of Levee Commissioners of the Tensas Basin Levee District this day.

Given under my hand officially at Rayville, La., on this 11th day of July, A. D. 1913.

J. W. SUMMERLIN, *Secretary.*

126 STATE OF LOUISIANA,
Parish of Richland:

I hereby certify the above and foregoing to be a true copy of the original act of compromise made and executed before me on the 11th day of July, A. D. 1913, at my office in the Parish aforesaid.

In testimony whereof, witness my official signature and seal of office on this the 14th day of July, A. D. 1913.

[SEAL.]

G. F. PURVIS,
Clerk 7th Judicial District Court
and Ex-Officio Notary Public.

Endorsed: No. 694 in Equity. United States District Court, Western District of Louisiana. Board of Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd. Certified Copy of Act of Compromise Executed July 11, 1913, Between Tensas Basin Levee Board and Tensas Delta Land Company, Ltd. Filed Jul- 29, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana. Filed in evidence Oct. 21, 1913. Leroy B. Gulotta, Clerk, U. S. Dist. Court.

Tensas Basin Levee Board.

Office of the Secretary.

T. B. Gilbert, Sr., President.
J. W. Summerlin, Secretary.

Commissioners.	Parishes.	Addresses.
C. H. McHenry	Ouachita	Monroe, La.
J. S. Rolfe	Morehouse	Oak Ridge, La.
O. M. Smith	Caldwell	Riverton, La.
W. S. Peck	Catahoula	Sicily Island, La.
127 T. B. Gilbert, Sr.	Franklin	Wisner, La.
J. A. Lester	West Carroll	Oak Grove, La.
B. E. Blake	La Salle	Olla, La.
Geo. J. Glover	Richland	Rayville, La.

RAYVILLE, LA., July 19th, 1913.

Honl. R. G. Pleasant, Attorney General, New Orleans, La.

DEAR SIR: With reference to the Resolution adopted by this Board, of date July 11th, 1913, and the act of Compromise entered into between the said Board and the Tensas Delta Land Company, Limited, a copy of which being transmitted to you on the 14th inst., beg to advise that I was ordered by said Board to instruct you, as Attorney representing the same, to dismiss or have dismissed, the suit of Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited, No. 694 on the docket

of the United States District Court, in and for the Western District of Louisiana, at the costs of the Plaintiff.

Yours very truly,

(Signed) J. W. SUMMERLIN, *Secretary.*

Carbon copy.

I hereby certify the above to be a true, full and correct copy of the original letter as mailed by me to Honl. R. G. Pleasant, Attorney General, of above date.

Given under my hand officially at Rayville, Louisiana, on this 22nd day of July, A. D. 1913.

J. W. SUMMERLIN, *Secretary.*

128 Exhibit 2.

Endorsed: No. 694. In Equity. United States District Court, Western District of Louisiana. Board of Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd. Certified Copy of a Letter from J. W. Summerlin, Secretary of The Tensas Basin Levee Board to Hon. R. G. Pleasant, Attorney General, New Orleans, under date July 19, 1913, (saying that the Board had ordered Secretary to instruct Atty. General to dismiss Suit No. 694. Filed Jul- 29, 1913. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

EXHIBIT "3."

Treasurer State of Louisiana.

No. 5132. BATON ROUGE, July 24-1913.

Received of J. W. Summerlin, Secretary Tensas Basin Levee Board one hundred thousand xx/100 dollars, being for amount derived from compromise made of the suit for the Tensas Levee Board against the Tensas Delta Land Co., Ltd.

TENSAS BASIN LEVEE DISTRICT FUND.

[SEAL.] LEDIEUX E. SMITH,

Treasurer State of Louisiana.

$100,000.00.

Duplicate.

Filed Aug. 5, 1913. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana.

129 Filed in evidence Oct. 21, 1913, & Marked Exhibit 3, Le
roy B. Gulotta, Clerk U. S. District Court, W. D. La.

STATE OF LOUISIANA,
Treasury Department, Baton Rouge:

LeDoux E. Smith, Treasurer; Robert S. Bell, A. A. Bell, Assistants

This is to certify that on July 12th, 1913, I received a draft o
the Tensas Delta Land Co. for $100,000.00 signed by Hy. Bernstein
Agent in favor of the Tensas Basin Levee Board. The draft ha
been paid and the amount has been placed to the credit of Tensa
Basin Levee District, Baton Rouge, Louisiana, July 31st, 1913.

[SEAL.] LEDOUX E. SMITH,
Treasurer State of Louisiana.

Filed in evidence Oct. 21, 1913. Leroy B. Gulotta, Clerk U. S
District Court.

Exhibit 4.

Endorsed: No. 694. In Equity. United States District Court
Western District of Louisiana. Board of Commissioners of the
Tensas Basin Levee District versus Tensas Delta Land Company
Limited. Certificate of Treasurer of the State of Louisiana, Hon
LeDoux E. Smith: That $100,000 has been paid by the Tensas Delta
Land Co., Ltd., to the Tensas Basin Levee Board, and that the
amount of $100,000 had been placed to the credit of the
130 Levee Board. Filed Aug. 5, 1913. Leroy B. Gulotta, Clerk
U. S. District Court, West. Dist. of Louisiana.

RAYVILLE, LA., July 14th, 1910.

The following Resolution was offered by Mr. Davenport and
adopted:

Whereas, the Supreme Court of this State in the case of the State
of Louisiana vs. The Tensas Delta Land Company, Ltd., has held
that the State was not the proper plaintiff and without authority in
law to maintain the said suit, but that the Commissioners of the
Tensas Basin Levee District were the proper parties to bring said
suit, therefore,

Be it resolved by the said Board of Commissioners of the Tensas
Basin Levee District, that a suit be instituted by this Board and
through its proper officers, against the said Tensas Delta Land Com
pany, Ltd., for the recover- of the lands mentioned and described in
the petition in the case of the State of Louisiana vs. the said Tensas
Delta Land Company, Ltd., and to this end and for this purpose
M. C. Thompson, Attorney for this Board, be and he is hereby au
thorized and directed to at once get into communication with the
Attorney General of the State and with him, prepare, file and prose
cute to a finality the said suit against the Tensas Delta Land Com
pany, Ltd., for the recovery of said lands.

COPY BOUND

Be it further resolved, That the President and the said Attorney — be and they are hereby authorized to do and perform any and all acts necessary in order to get this case properly before the
131 Courts and to have it decided on its merits as speedily as the ends of justice and legal delays will permit.

I hereby certify the above to — a true and correct copy of the original resolution as adopted by the Board of Commissioners of the Tensas Basin Levee District, at its meeting held July 14th, 1910, and recorded in Record of Minutes of said Board pages 349, et-seqr.

Given under my hand officially, at Rayville, La. on this 25th day of September, A. D. 1913.

J. W. SUMMERLIN,
Secretary Board of Commissioners,
Tensas Basin Levee District.

Endorsed: No. 694. U. S. Dist. Court, West. Dist. of La. Board of Levee Com. of Tensas Basin Levee Dist. vs. Tensas Delta Land Co., Ltd. Certified Copy of Resolution of Board of Commissioners of Tensas Basin Levee District Dated July 14, 1910. Exhibit 5. Filed in evidence Oct. 21, 1913. Leroy B. Gulotta, Clerk, U. S. Dist. Court.

Whereas, T. B. Gilbert, Sr., President of this Board, in the interum of meetings, did on behalf of said Board, acting under his general authority as President, file an answer in the Federal District Court, to the Rule of the Tensas Delta Land Co., Ltd., to show cause why the suit of the Board of Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Co., should not be dismissed, joining the said Land Co. in its prayer:

Therefore, be it resolved by the Board of Commissioners of the Tensas Basin Levee District, in regular session convened, that the said action of T. B. Gilbert, Sr., President, be and the same
132 is hereby ratified and approved, and further, that this Board does hereby specially authorize the said T. B. Gilbert, Sr., President, to take any further action on behalf of this Board that may be found necessary for the dismissal of the said suit of this Board vs. Tensas Delta Land Co., Limited.

Adopted, October 9th, 1913.

T. B. GILBERT, Sr., *President.*

Attest:
J. W. SUMMERLIN, *Secretary.*

I hereby certify the above to be a true and correct copy of the original Resolution, as adopted this day, at a regular meeting of the Board of Commissioners of the Tensas Basin Levee District.

Given under my hand officially, at Rayville, La., this 9th day of October, A. D. 1913.

J. W. SUMMERLIN, *Secretary.*

Endorsed: No. 694. U. S. Dist. Court, West. District of Louisiana. Board of Levee Commissioners of Tensas Basin Levee Dis-

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trict vs. Tensas Delta Land Co., Ltd. Certified Copy of Resolutic of Board of Commissioners of Tensas Basin Levee District date October 9, 1913. Exhibit 6. Filed in Evidence Oct. 21, 1913. L roy B. Gulotta, Clerk, U. S. Dist. Court.

133 United States District Court for the Western District Louisiana, Monroe Division.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRIC
vs.
TENSAS DELTA LAND COMPANY, LTD.

Brief on Application and Motion of Complainant and Defenda to Dismiss Suit on Ground of Compromise Entered Into.

May it please the Court:

The defendant in this case has presented to your Honor a motio in due form, suggesting that on the 11th day of July, 1913, th parties complainant and defendant in this suit had compromise their differences, and had executed a notarial act evidencing sai compromise, under and by virtue of which the defendant had pai to, and complainant had received the sum of one hundred thousan ($100,000.00) dollars in full settlement, satisfaction and compr mise of all the matters and things set forth in the suit and bill complain- and amended bills of complaint filed herein against th defendant, and upon which motion and suggestion, your Honor i sued a rule directed to the complainant and its counsel of recor the Honorable R. G. Pleasants, Attorney General of the State Louisiana, to show cause, on the time fixed by the Court, why th prayer of mover should not be granted and said suit dismissed, an defendant be dispensed from any obligation to file any further pr ceedings herein.

134 On the service of this rule on the complainant Boar through its proper officer, its President, said Board came int Court by and through its President, acting in proper person, and file its answee to said rule, admitting in every respect the execution the compromise referred to, and joining defendant in its applic tion and motion to dismiss this cause, and to recognize and put int effect, as res adjudicata, the terms and provisions of said act of com promise.

Complainant's counsel of record, the Honorable Attorney Gener of the State of Louisiana, has, notwithstanding the answer file herein by the said complainant, filed in its name what he term and designates an answer to the rule herein issued, and in whic he sets up vaarious and sundry allegations and reasons why thi Honorable Court should not recognize the compromise entered int between the parties litigant herein, and asks that he be permitte over the objection of the complainant, whom he represents, to pr ceed with the prosecution of this suit.

We do not deem it necessary to comment on the reasons whic in our opinion, actuate and *has* brought about the filing of this mo

extraordinary document on the part of the Attorney General, and will content ourselves in pointing out what we believe to be the law controlling the matter, and the authorities and jurisprudence sustaining such principles of law as we announce.

The documents filed herein, attached to and made a part of the motion to dismiss, and filed on the trial of said motion, show that on the date named, the act of compromise was entered into, as alleged in the motion.

A certificate is presented and filed from the Honorable Le Doux E. Smith, Treasurer of the State of Louisiana, showing the
135 payment of the sum named in said act of compromise, by the defendant company to the complainant, to-wit: the sum of one hundred thousand ($100,000.00) dollars, and that same has been, by said Treasurer, placed to the credit of the complainant Board in the State Treasury.

There has also been filed a certified copy of a letter and original notice by the Complainant Board to the Honorable Attorney General, under date of 19th of July, 1913, informing him of the Act of said Board in compromising this cause, and requesting him, as Attorney of record for said Board, to appear in this Court and dismiss said cause.

There has also been filed a certified copy of the original resolution of the complainant Board of date July 14, 1910, instructing the Honorable M. C. Thompson, Attorney of the Board, to, in connection with the Attorney General of the State, prepare, file and prosecute a suit against the defendant Company of the character herein filed, and under which authority, this suit was originally instituted and prosecuted.

These documents, taken in connection with the provisions of Act No. 59 of the Acts of the General Assembly of the State of Louisiana, approved July 3, 1886, and other acts amendatory thereof, creating the Board of Levee Commissioners of the Tensas Basin Levee District, and transferring to *ti* title to certain lands from State of Louisiana, and giving it full power and authority of disposition and sale over said lands, together with Act No. 3 of the Special Session of the Legislature of 1910, making it the duty of the Attorney General of the State of Louisiana, upon the request of the Governor, to represent any political agency or subdivision of the State in any suit in any court, involving title to any land or real property be-
136 longing to any such political agency, constitute the record which is to be considered in determining the issues presented by the motion to dismiss and the objection of the Attorney General thereto.

In considering this matter, it is well, first, to determine what a compromise is, and whether the same is recognized by the laws of the State of Louisiana which govern and control in this litigation. The Civil Code of Louisiana, Article 3071, defines a transaction or compromise as follows:

"A transaction or compromise is an agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjusts their differences by mutual consent in the manner which

they agree on and which every one of them prefers to the hope of gaining, balanced by the danger of losing. This contract must be reduced to writing."

Thus, we see that the elements which go to make up a transaction or compromise are, first, there must be a difference between two or more persons, either upon what a law suit is contemplated or existing or might be brought. The parties must agree upon the terms of adjusting such differences, and the contract must be reduced to writing.

The document presented to the Court in this instance, and those that accompanied it, clearly show that it is in correct form, embracing and making full proof of every element that enters into and goes to make up a transaction or compromise under the laws of Louisiana.

There was a litigation pending between the parties. They agreed, after thorough discussion, to adjust their differences. They reached an amicable agreement, which each was willing to accept and pre-

ferred to the hope of gaining, balanced by the danger of
137 losing. Complainant was willing to accept $100,000.00 and
ratify and confirm the defendant's title to the property in controversy. The defendant was willing to give the $100,000.00 and have its title ratified and confirmed. The contract and agreement of compromise was reduced to writing and executed before a notary and two witnesses.

The next question presented to the Court is, who has the right to enter into a contract of compromise, or make a transaction of this character? The Civil Code of Louisiana, Article 3072, reads as follows:

"A man, to transact, must have the capacity to dispose of the things included in the transaction."

Act 59 of 1886, creating the Board of Commissioners of the Tensas Basin Levee District, and defining their authority, etc., under Section 3, constitutes and creates the same to be a body politic, with corporate powers, to sue and be sued in their corporate name, to have a seal and to have the power to do and perform all the purposes of the act, etc.

Act No. 77 of 1888, amendatory of the act just above referred to, under and by which the lands which are the subject of this litigation were conveyed from the State of Louisiana to the Levee Board, contains the following provisions:

"All lands now belonging, or that may hereafter belong to the State of Louisiana and embraced within the limits of the Tensas Basin Levee District, as herein constituted, shall be and the same hereby are given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas Basin

Levee District, whether said lands are part of lands originally
138 granted by the Congress of the United States, to this State, or
whether said lands have been or may hereafter be forfeited to or bought in by or for or sold to the State at tax sales for non-payment of taxes, etc."

It further provides that,

"The Auditor and Register of the State Land Office of the State of

Louisiana, shall, on behalf of and in the name of the State, convey to the said Board of Levee Commissioners, by proper instrument or conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever, from time to time, said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners or by the President thereof, etc., and when *so* conveyances are so recorded, the title to said lands, with possession thereof, shall from thence forth vest absolutely in said Board of Levee Commissioners, its successors or grantees. * * * Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such time and for such price as to said Board shall seem proper."

From the quotation of the Acts creating the Levee Board above referred to, it will be seen that the authority to dispose of the lands conveyed by the State to the Board is expressly granted, thereby placing that Board within the direct terms and provisions of Article 3072 of the Civil Code, which declares that a person, to enter into a transaction or compromise, must have the capacity to dispose of the things included in the compromise.

The things included in the compromise in this instance was
139 the land in question. The Board of Levee Commissioners had full power and authority in law to dispose of these lands by sale or otherwise and at such price and under such terms as to that Board seemed best. Therefore, it had a perfect legal right and authority to compromise said litigation involving the titles to or any sale of said property.

There can be no question of the capacity or right of the defendant company to enter into a compromise with reference to said lands, and therefore it is unnecessary to refer to its corporate powers and authority.

The next question is, what can be embraced in the terms of a transaction or compromise? Civil Code of Louisiana is equally clear on this question. Article 3073 says:

"Transactions regulate only the differences which appear clearly to be comprehended in them by the intention of the parties, whether it be explained in a general or particular manner, unless it be the necessary consequence of what it expresses, and they do not extend to the differences which the parties never intended to include in them. The renunciation which is made therein to all rights, claims and provisions extends only to what relates to the differences on which the transaction arises."

This definition of the Code provides for special compromises, wherein the parties agree and compromise particular differences that exist between them, and as contradistinguished from Article 3083 of the Code, which defines a general compromise, wherein parties agree and do compromise generally on all the differences which they might have had with one another, the titles which they then know nothing of, and which were afterwards discovered, etc.

140 In the particular instance before the Court, the compromise comes within the terms of Article 3073 above quoted, and is intended and clearly adjusts and settles, as stated therein, all

the differences existing between the parties, as set forth and contained in the Bill of Complaint and amended Bills of Complaint filed in this suit, and growing out of or in any manner connected with the lands in controversy and the execution of the sales and deeds under which the defendants hold the same. So, in this connection, we have the compromise executed by the parties having the capacity to execute, and covering a distinct and definite difference existing between them.

What is the effect of such a compromise? Article 3078 of the Civil Code says:

"Transactions (compromise) have, between the interested parties, a force equal to the authority of things adjudged; they cannot be attacked on account of any error in the law or any lesion, but an error in calculation can always be corrected."

The "things adjudged" is defined by the Civil Code of Louisiana, Article 3556, paragraph "31" as follows:

"Thing adjudged is said of that which has been decided by a final judgment, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for appealing is elapsed, or because it has been confirmed on appeal."

How may such a transaction or compromise be re-cinded? Not in the manner that the Attorney General in this instance is asking of the Court, but only in the manner defined by Article 3079 of the Revised Civil Code, which reads as follows:

141

"A transaction may be re-cinded notwithstanding, whenever there exists an error in the person or *on* the matter in dispute. It may likewise be rescinded in the cases where there exists fraud or violence."

The Attorney General in his answer nowhere intimates, sets up or claims that the compromise in this instance was effected as the result of an error, or that there existed any fraud or violence in its consummation or execution. This and this only would furnish reasons in law for the setting aside of such a transaction or compromise, and then only could it have been done at the instance of one of the parties thereto, or someone having a legal interest therein. Such a case is not presented to the Court in this instance. The Honorable Attorney General appears in said motion, representing neither himself nor either of the parties to this cause, in fact, to use an old saying, "He represents nothing in Heaven or on earth or under the earth."

May a transaction or compromise embrace and settle the question of alleged charges of fraud? This question strikes at what seems to be the burden of the Attorney General's song, and is answered by the plain and unequivocal language of Act 3080 of the Revised Civil Code, which reads:

"A transaction may also be rescinded, when it has been made in execution of a title which is null, unless the parties have expressly compromised on the nullity."

142

The negative being pregnant with the affirmative, it follows that if the nullity alleged and charged and existing was one growing out of fraud or existing for any other reason, and with full knowledge and appreciation thereof, the parties expressly compromised on the nullity, the compromise becomes effective in law the

same as if made with respect to any other object or difference that might exist. The Supreme Court of Louisiana, however, have left nothing uncertain with regard to this question. In the case of Russ vs. Union Oil Co., reported in 113 La. 196, the Supreme Court of Louisiana says:

"No rule of law, morals or ethics prevents a plaintiff from compromising, and he can make a compromise which has the force of res adjudicata."

Again, in the case of Turregano vs. Barnett, 127 La., 620, the Supreme Court of Louisiana said:

"A settlement of business transactions where, with full knowledge of all material facts, money is accepted and a receipt in full given, will not be disturbed, in the absence of allegation and proof of error or fraud."

The Louisiana case most nearly parallel with the case at bar is that of State vs. Hackley, Hume & Joyce, 119 La., 482. Suit had been brought by the District Attorney on behalf of the State to set aside, on the grounds of fraud, certain entries of land and certain patents issued thereon. There was a tentative compromise entered into between the owners of the land, Hackley, Hume & Joyce, and the Governor of the State, wherein it was proposed to amicably adjust the issues of the suit and settle by compromise the titles to the land for and in consideration of the payment of the sum of
143 twenty seven thousand four hundred forty seven and 12/100 ($27,447.12) dollars. It was proposed to submit this proposition to the General Assembly at its sessions in 1908. The District Attorney refused to discontinue the suit at the request of the Governor, for reasons which, as here, were sufficient unto himself, whereupon the Governor requested the Attorney General to file a motion for continuance, pending the settlement, which was done and granted by the trial Court, and the matter was presented to the Supreme Court of this State on application of the District Attorney for writs of certiorari and mandamus, raising the question of his authority to continue in the prosecution of the suit brought by him in the name of the State, notwithstanding the stay obtained by the Attorney General.

It is significant, in considering that case in connection with the one at bar, that the compromise and adjustment of a land issue, where even fraud is charged by the State of Louisiana, is not an unheard of procedure.

The present Attorney General, who loudly proclaims indignation at the same, was Assistant to his predecessor, the Hon. Walter Guion, who filed the motion for continuance in order that the compromise might be effected in the Hackley & Hume case. The Supreme Court says:

"The General Assembly should be given the opportunity to consider questions that here arise in regard to these lands. They doubtless will settle upon such action as will protect the State."

The Levee Board in this instance possessed the same powers over the lands in controversy as did the State over the lands embraced in the Hackley, Hume & Joyce suit above quoted & the question of public policy was left to its determination solely.

144 As was said by the Supreme Court of the United States in the Girard will case "the public policy of a state is to be found in its constitution, laws and judicial decisions, and we are not at liberty to look beyond these to what individuals might regard as general considerations of supposed public interests".

In the words of Mr. Justice Storey:

"The question, what is the public policy of a State and what is contrary to it, if inquired into beyond these limits, will be found to be one of great vagueness and uncertainty and to involve discussions which scarcely come within the range of judicial duties and functions, and upon which men will complexially differ". Videl vs Girard's Executors, 2 Howard, 127-197-98."

Instead, then, of finding anything in the Constitution, Statutes or judicial decisions of Louisiana upholding the contention that this compromise is *agent* public policy of the State, as is contended for by the learned Attorney General, we find, in a very similar case, the Supreme Court of Louisiana upholding the hand of the Attorney General in staying the efforts of the District Attorney to bring just such a case to trial in order that a compromise for a money consideration may be presented to the Legislative Body for the purpose of quieting titles to State lands alleged to have been fraudulently obtained.

We will refer further briefly to the cases arising in Louisiana touching upon the question of whether charges of fraud are proper subjects of a legal compromise adjustment.

Antoine vs. Smith, et al., 40 An. 560. In this case, the Court held that the cause of the contract sued on and the motive of
145 its transfer were in themselves intrinsically unlawful, false and illegal and opposed to good morals and public policy, and, therefore, could not be enforced. In fact, the Supreme Court goes to the extent of using the following language:

"But however *must* we may reprobate such scandalous transaction; however much we may feel constrained, for decency's sake, to summarily eject the plaintiff from the portals of the Temple of Justice, it is our deliberate opinion that it cannot be done in the present attitude of this affair."

The reason the transaction could not be set aside was that it had been compromised and this compromise attacked, but upheld and maintained by the Court, quoting Article 3045 of the Civil Code of Louisiana, which expressly provides that a compromise cannot be annulled on account of any lesion, because it is an agreement — put an end to a law suit, and which the parties prefe- "to the hope of gaining, balanced by the danger of losing."

The Supreme Court of Louisiana has held valid compromises entered into for the purpose of accomplishing a thing expressly prohibited by law.

In the suit of Calhoun vs. Lane, et al., 39 An. 594, the Court upheld a compromise between two forced heirs to the succession of their mother which had the effect of binding a married woman's property for the debt of her husband, in the following language:

"It cannot be contested that a married woman has the right to compromise a law suit pending against herself, or to make a transaction

for the purpose of preventing a lawsuit against herself; and
146 transaction- have between the parties a force equal to the authority of things adjudged."

Barrion vs. Sollibellos, 26 An., 289;
Sentelle vs. Stark, 37 An., 679;
Davis vs. Lee, 20 An., 248;
Roburn vs. Pearson, 23 An., 696;
R. C. C. 3071-3073-3078.

"Compromises are not of that class of contracts to which sales belong; therefore a transaction entered into to end litigation, strife, and disputes, although only a cession of rights and pretentions, has a good consideration and is enforceable at law." 20th An., 248; Pothier Obligations, 1, 35-36.

In Oglesby vs. Attrill, 105 U. S., 605, which was a writ of error to the Circuit Court of the United States for the Louisiana District, the Supreme Court of the land, in a suit brought by certain shareholders to enjoin the directors of a corporation from proceeding to enforce an assessment on the stock of the Company, setting up "frauds, and machinations of the officers of the said Company," which matters had been the subject of a compromise therein sought to be set aside, said:

"Where the action of a corporation is lawful, the motives therefor or the expediency thereof is not a subject of judicial inquiry. The supposed fraudulent intentions of the officers in levying the assessments, which are not alleged as frauds for treating it as invalid, were urged by the defendants as reasons for enjoining its enforcement in the suit they instituted; and any claims arising from that clause were covered by the compromise admitted in the pleadings.

A compromise by the Code of Louisiana is defined to be 'an
147 agreement between two or more persons who, for promoting or putting an end to a lawsuit, adjusts their differences by mutual consent, in the manner which they agree on, and which any one of them prefers to the hope of gaining, balanced by the danger of losing' (Article 3071 Civil Code); and has between the interested parties a force equal to the authority of a thing adjudged. It cannot be attacked on account of any error in law or any lesion, (Article 3075). The compromise stands, therefore, as a judgment, making a settlement of the very matters now set up as grounds of complaint in the petition in reconvention; that is, the frauds and machinations of the officers of the Company in levying the assessments. It settled all claims arising from the assessment and the alleged fraudulent purpose of the officers in connection with it. No allegations of fraud, in addition to those made at the settlement, can prevent the compromise from having effect as a judgment thereon. It may, indeed, by a direct proceeding instituted for that purpose be rescinded for fraud, but it cannot, any more than any other Judgment, be attacked collaterally."—Adle vs. Prudhom, 164 An. 343.

See also 33 An., 668; 33 An. 671.

In view of this decision of the highest Court in the land in a Louisiana case, we fail to appreciate the grounds upon which the learned Attorney General seeks to stand, and respectfully submit the above authorities as conclusive of the proposition that under the Louisiana law, a transaction or compromise may properly embrace and definitely settle the questions of alleged charged of fraud.

We hardly deem it necessary to cite the Court to authority for the proposition that an attorney at law has no right to oppose a compromise made by his client, quoad the rights of that client, as such a contention is in itself sufficient authority for its rejection. However, our Court has so unequivocally spoken, we will briefly
148 cite the authorities, should your honor entertain any doubt on that proposition.

In the suit of Smith vs. Vicksburg, Shreveport & Pacific Ry. Co. where also there were charges of collusion and fraud, and where the attorney for a litigant attempted to carry on the case after compromise by his client, the Court said:—

"Defendant is to be considered as any other third person not prohibited by law from entering into a compromise with its creditors. The moral side of the question is not before us, nor the consideration of that which a careful business man, anxious to see that every one receives his own, would have done under similar circumstances, but this does not create a legal tie between the attorney here and the defendant company. 'We know of no law giving an attorney at law a privilege on a judgment not yet in existence, and no law to compel a party to prosecute a suit to a judgment in order that the attorney in the suit may obtain and enforce a privilege on the said judgment for his professional services. Plaintiffs having compromised their suit against the defendant (which they had a right to do) and demand its dismissal, it was at an end and there is no suit in which an intervention can be maintained.'—Rind vs. Hunsickle, 24 An. 572. Mandate is a consensual and imperfect synallagmatic contract. Gratuitousness does not appertain to its essence, but to its lagmatic contract. It is therefore stipulated a remuneration for services rendered, and it differs from hire of labor in this: That the hired person is not vested with any representative capacity and receives a price and not a stipend or honorarium. A contract for the services of members of the legal profession is not a hire of labor but a mandate. A principal has the right to revoke the powers of agency given him for an indefinite period—and such
149 contingent forfeiture are implied in such a case. The proper views of a lawyer's authority, under our Code, which has modified the Roman law as well as under the French Code, is expressed by Laurent, Vol. 27, No. 333, page 375; No. 339, page 334; No. 338, page 382; No. 339 page 384. It is not correct to urge that the evidence and the notarial act under consideration are evidence of a locatio operarum, a hire of labor, for the obvious reason that the hir-d party is not vested with any representative capacity and receives a price and not a remuneration. He merely acts as an undertaker of work and in no way as the agent of his hirer or employer.

There exists such dissimilarity between the two positions and the functions of each are so distinct, that they are incompatible."

See also Waterman vs. Gibson, 5 An., 672.
Succession of Fowler, 7th An., 207; and
Berlier, Tarrible and Bertrand, "Discours et motifs au corps Legislatif, Mch., 1904.
Troplong, Du Lonage, Vol. 3, P. 15, No. 795, et seq.
Pothier, Du Mandat, p. 95, No. 22.

"Where an attorney for a litigant moves, as such attorney, for such an appeal from a judgment against his client, and it is not pretended that such an attorney has personally any appealable interest, the appeal will be dismissed, as the Court is obliged to notice, of its own motion, the absence of the proper parties, since it has no authority to adjudicate the rights of persons who are not before it, or of persons who have no rights before it.—Voelkel vs. Succession of Aurich, 118 La. 526.

Succession of Landry, 117 La. 193.

"After a judgment, an attorney at law, under the general
150 authority from his client to act in the case, is without authority to make a gratuitous waiver of appeal. Keoughan vs. Oil Co., 116 La. 773.

"An attorney at law, who has been discharged by his client, cannot, against the will of the latter, give bond and prosecute an appeal in his name, and an appeal so taken will be dismissed on motion of the client.—Ikard vs. Borland Sheriff, 35 An., 337.

"An Attorney at law, who has instituted a suit, which is afterwards compromised before judgment, cannot be permitted to prosecute the suit further,—Rind vs. Hunsikel, 24 An. 571.

Legere vs. Richard, 10 An., 669.

In San Mateo County vs. Southern Pacific Ry. Co., 116 U. S., 138, the court hears a motion by counsel for plaintiff in error, specially appointed for the purpose, to dismiss the writ of error, which motion is opposed by counsel of record for plaintiff in error (who) desired to carry on the case irrespective of settlement, for the purposes of precedent). The Court dismisses the writ on the ground that there is no longer an existing cause of action.

The case presented by the compromise effected in this matter is in no way extraordinary, but is the ordinary case of the compromise of a disputed claim where, it is true, fraud has been alleged, but in no way proven. The Levee Board on the one side and The Tensas Delta Land Company, Ltd., on the other, dealing with each other on terms of equality, holding no relation of trust or confidence to each other, and each having knowledge or the opportunity to acquire knowledge of every fact bearing upon the validity of their respective claims, have entered into a compromise, and in the absence of fraud, duress or misrepresentation, which is not charged
151 here, in the effecting of the compromise, a compromise under such circumstances will not be overthrown.

"A settlement of a dispute claimed between parties dealing on terms of equality and having no relations of trust or confidence to each other, each having knowledge or the opportunity to acquire knowledge of every fact bearing upon the validity of their respective claims, will be supported by a Court of Equity in the absence of fraud or the concealment of facts, which the party concealing was bound to disclose. Such a settlement ought not to be overthrown, even if the Court should not be of the opinion that the party complaining of it surrender rights that the law, if appealed to, would have sustained." * * *

Hennessy vs. Bacon, 137 U. S. 78;
Cleveland vs. Richardson, 132 U. S. 318-329;
Hager vs. Thompson, 1 Black, 80.

In Chicago & Northwestern Railroad Company vs. Willcox, 116 Fed., 913-14, (C. C. A. 8th Circuit) Judge Sanborn states the rule thus:

"The purpose of the law has always been to promote and sustain the compromise and settlement of disputed claims; it loves peace, hates broils and dissensions and discourages the prolongation of litigation, and the revival of contests which have once been closed. The Judgment of the Court settles the claims submitted to it and estops the parties from again litigating them after they have been adjudicated. In the absence of fraud or mistake, an executed agreement of settlement of an unliquidated or disputed claim constitutes as conclusive and as effectual an estoppel against the parties to the compromise from again litigating the claim thus settled. As the final judgment of a court of competent judisdiction, to the
152 effect that the rights of the parties are as they are set forth in the agreement; and such a contract is always upheld by the Courts."

It is not claimed in behalf of the Attorney General that there is or was fraud or mistake in the execution of this compromise agreement, nor that it was made with other than the most deliberation, nor that the compromise in question is against the pecuniary interests of the Levee Board by whom it was made. On the contrary, the Levee Board itself is present in Court standing by the compromise and asking that it be recognized and given effect, and we have the anomalous situation of both parties to the compromise of a dispute asking the Court to give effect to that agreement which was entered into for their mutual advantages, advisedly, and after the facts in the case had been thoroughly considered and were fully known to both of them, while the Attorney General of the State of Louisiana, whose duty it is under the law to act as Attorney for one of the parties to the compromise, the Levee Board, when requested, opposing the settlement on visionary grounds of a public policy not supported by the Supreme Court of his State, the chief executive thereof, or his own predecessor in office, and this position he assumes without any suggestion by him that the State or the Levee Board, or any one else enterested will refund to the Land Company the $100,000.00 consideration paid to effect this compromise. This money has already been

applied to the uses of the Board and to carry on this suit, as is desired by the Attorney General, is to ask this Court to repudiate or rescind the compromise made with the Levee Board, over the protest of the Levee Board, and without restoring the consideration. It is elementary that a person who enters into a contract and after-
153 wards seeks to avoid the effect of the contract, on any ground that would entitled him to rescind it, must first restore what he has received.

Grimes vs. Sanders, 93 U. S. 55-62.
McLean vs. Crap, 141 U. S. 429.
Ward vs. Sherman, 192 U. S. 168-177.

The situation would be novel were the Levee Board itself asking the re-cision of this agreement, but with them asking its recognition and bearing in mind that the sum of $100,000.00 has been received by it, pursuant to this contract of compromise, the opposition of the Attorney General, without offering to restore the same, or without power to do so, is asking this Court to permit him to carry on the prosecution of this case on the vague ground that it is against public policy to compromise a question of principle, is anomalous, for by his very act in so asking that the agreement be set aside and the litigation proceed, and at the same time allowing the Levee Board to retain the $100,000.00, which it procured because of the supposed release of all its claims to the land, is to ask that this Court sanction the perpetration of a fraud.

The relation of the Attorney General of the State of Louisiana toward the Board of Commissioners of Tensas Basin Levee Dist., has fortunately been the subject of judicial determination, and we beg leave, in conclusion, to quote the language of Mr. Justice Provosty in the suit of the State of Louisiana vs. Tensas Delta Land Company, growing out of the same transaction as the case at Bar, as reported in the 126th La., on page 72:

"The argument that the said Board is nothing more than a mere agency or instrumentality of the State, and that, therefore
154 the State may sue in every case where the said Board might sue, contains a manifest non sequitur. Every city, town and parish of the state is a mere agency or instrumentality of the state; but no one would venture to say that the Attorney General could ignore the existence of these corporations and enforce, in the name of the state, any cause of action which any of them might have.

"The legislative control over corporations of the character of this Levee Board is much more complete than over municipal corporations proper and parishes,—it made them, and can at any time abolish them, so long as the obligations of their contracts are not thereby impaired—but these corporations have their existence and exercise their functions by and under the Constitution and statutes of the State, and so long as these established laws remain in force, it is they which must regulate the property and other rights of said corporations and their modes of action, and the disposition of their property, and their rights to sue and to be sued. If one of these corporations has a right of action, the proper functionary to enforce

same is the governing body of the corporation, and not the Attorne General, or the State."

Respectfully,

FARRAR, JONAS, GOLDSBOROUGH & GOLD-BERG,
W. F. KEENEY,
HUDSON, POTTS & BERNSTEIN,
For Def't.

Endorsed: No. 694 in Equity. U. S. Dist. Court for Western Dis of La. Board of Commissioners of Tensas Basin Levee Dist. vs. Ten sas Delta Land Co. Ltd. Brief of Tensas Delta Land Co. Ltd., o Application & Motion of Complainant & Defendant to Dismiss Suit on Ground of Compromise Entered into.

155 United States District Court for the Western District o Louisiana, Monroe Division. In Equity.

No. 694.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LIMITED.

In this cause there came on to be heard the motion of defendan to dismiss said cause at the cost of complainant, pursuant to an ac of compromise in writing between the parties bearing date the 11t day of July, 1913. Upon such hearing it was made to appear tha the order directed to complainant and its counsel, the Honorabl R. G. Pleasants, Attorney General of Louisiana, issued by this Cour on July 19th, 1913, and commanding them to show cause befor this Court on the first day of its then next term why said caus should not be dismissed as prayed by defendant, was duly serve on them as therein provided, and that said complainant appearing herein by its president, T. B. Gilbert, thereunto duly authorized, filed its answer consenting, to such dismissal, and that the Hon R. G. Pleasants, Attorney General of the State of Louisiana, file his separate answer objecting to such dismissal. The hearing upon said motion to dismiss was continued from the first day of term until the present day. Henry Bernstein and W. F. Keeney ap-peared in support of said motion to dismiss, and no one appeared in opposition thereto save as opposition was made by the answer o the Attorney General.

And upon full consideration thereof, it appearing to the Cour that all and singular the matters set forth in the bill of complain and amended bills of complaint have been forever compro-
156 mised and settled between the parties to this suit, and tha the compromise in writing between the parties bearing dat the 11th day of July, 1913, has the force and effect of a thin adjudged,

It is, therefore, ordered, adjudged and decreed that the said compromise entered into by and between the complainant and defendant herein on the 11th day of July, 1913, be and the same is recognized by this Court as having the effect of the thing adjudged and as settling all the issues involved in this cause, and the said suit is therefore dismissed as prayed for in said rule at the cost of complainant.

Done, read and signed in Open Court, at the City of Monroe, Louisiana, on this 21st day of October, A. D. 1913.

ALECK BOARDMAN.
U. S. Judge.

Endorsed: No. 694. U. S. District Court, Western Dist. of Louisiana. Board of Commissioners of Tensas Basin Levee District, vs. Tensas Delta Land Co., Ltd. Decree Dismissing Suit. Filed Oct. 21, 1913, Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 3, Folio 243.

157 United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

Clerk's Certificate.

I, Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify the above and foregoing 66 pages to be a full, true and perfect transcript of the record and proceedings had in the cause entitled Board of Levee Commissioners of Tensas Basin Levee District versus Tensas Delta Land Company, Limited, No. 694 in Equity on the docket of said Court, the said transcript being made to include all documents filed and orders entered, and proceedings had, in the said cause subsequent to the appeal taken therein on October 21st, 1912, beginning with the Mandate and Opinion of the United States Circuit Court of Appeals dated April 8th, 1913, remanding this cause, and all proceedings on the Rule to Show Cause why suit should not be dismissed and dismisssal thereof, as the original of same appear on file in this Office.

Witness my hand and seal of Office, at the City of Shreveport, Louisiana, on this the 11th day of June, A. D., 1914.

[SEAL.]

LEROY B. GULOTTA,
Clerk United States District Court
for Western District of Louisiana.

158 *Submission.*

Extract from the Minutes of October 5, 1914.

No. 2636.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA
versus
Hon. ALECK BOARMAN, Judge U. S. District Court for the Western District of Louisiana

On this day this cause was called, and was submitted to the Court by E. H. Farrar, Esq., and Henry Bernstein, Esq., for Respondent,—leave being subsequently granted to Ruffin G. Pleasant, Esq., Attorney General of the State of Louisiana, to file a brief in behalf of Petitioner.

Opinion of the Court.

Filed October 29th, 1914.

United States Circuit Court of Appeals, Fifth Circuit.

159 No. 2636.

UNITED STATES ex Rel. STATE OF LOUISIANA.

On Rule for Mandamus and Certiorari to the United States District Court for the Western District of Louisiana.

Before Pardee, Circuit Judge, and Grubb and Call, District Judges.

By the COURT:

The application for a mandamus and certiorari to the Judge of the Western District of Louisiana to allow an appeal on the part of, and in behalf of, the State of Louisiana from a decree rendered in the District Court of said district in the case entitled "Board of Levee Commissioners of the Tensas Basin Levee District v. Tensas Delta Land Company, Ltd.," is denied.

1. Under the decision of the Supreme Court of the State of Louisiana, reported in State v. Tensas Delta Land Co., Ltd., 126
160 La. 59, the Supreme Court of the State on full consideration decided that the State was without real or beneficial interest in the lands in controversy, and this decision is controlling in this court.

2. "One who is not a party to a record and judgment is not entitled to an appeal therefrom. Bayard v. Lombard, 9 How. 530; Indiana v. Liverpool & London & Globe Ins. Co., 109 U. S. 168; Ex Parte Cockroft, 104 U. S. 578." Ex Parte in the matter of Leaf

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Tobacco Board of Trade of the City of New York, Petitioner, 222 U. S. 578, 581.

Rule discharged.

Judgment.

Extract from the Minutes of October 29, 1915.

No. 2636.

UNITED STATES OF AMERICA ex Rel. STATE OF LOUISIANA
versus
HON. ALECK BOARMAN, Judge United States District Court, Western District of Louisiana.

161 This cause came on to be heard on the application of the United States of America, on the relation of the State of Louisiana, through Ruffin G. Pleasant, Attorney General of said State, for a Mandamus and certiorari to the Judge of the Western District of Louisiana to allow an appeal on the part of, and in behalf of, the State of Louisiana from a decree rendered in the District Court of said district in the case entitled "Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd.," and was submitted to the court on the record and briefs;

On consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the said application for a mandamus and certiorari be, and the same is hereby denied, and the rule to show cause thereon discharged;

It is further ordered, adjudged and decreed that the peti-
162 tioner, the State of Louisiana, be condemned to pay the costs of this cause in this Court.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 42 to 162 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2636, wherein United States of America Ex Rel. State of Louisiana is Petitioner, and Hon. Aleck Boarman, Judge
163 United States District Court, Western District of Louisiana, is Respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered

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from 1 to 41 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of September, A. D. 1915.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States
Circuit Court of Appeals,
By GEORGE W. ROBERTSON,
Deputy Clerk.

a

No. 667.

EXHIBIT RECORD I.

Transcript of Record.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2446.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT, Appellant,
versus
TENSAS DELTA LAND COMPANY, LIMITED, Appellee.

Appeal from the District Court of the United States for the Western District of Louisiana.

[Original record filed November 21, 1912.]

U. S. Circuit Court of Appeals. Filed Dec. 12, 1912. Frank H. Mortimer, clerk.

1 United States District Court, Fifth Circuit, Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

Transcript.

Appealed to the United States Circuit Court of Appeals for the Fifth Circuit from the United States District Court for the Western District of Louisiana.

Hon. R. P. Pleasant, Attorney General, State of Louisiana.
Hon. Harry P. Gamble, Assistant Attorney General, State of Louisiana,
M. C. Thompson, Esq., Solicitors for Complainant, Appellant.
Messrs. Farrar, Jonas, Goldsborough & Goldberg.
Messrs. Hudson, Potts & Bernstein, Solicitors for Defendants, Appellees.

To the Honorable the Sixth Judicial District Court of the State of Louisiana, Sitting in and for the Parish of Ouachita:

The petition of the Board of Levee Commissioners of the Tensas Basin Levee District, a corporation created by, and existing
2 under and by virtue of, Act. No. 59 of the Acts of the General Assembly of the State of Louisiana, approved July 3,

1886, residing and having its domicile at Rayville, in the Parish of Richland, State of Louisiana, appearing herein under and by virtue of a resolution duly and regularly adopted at a meeting of said Board on the 14th day of July, 1910, a duly certified copy of which is hereto annexed as part hereof, directing the institution of this suit, which is also brought by the attorney-general of the State of Louisiana, who appears herein for said Board of Levee Commissioners under and by virtue of the written authority and instruction of the Governor of the State of Louisiana, dated the 4th day of January, 1911, issued under the authority of Act No. 3 of the Acts of the General Assembly of the State of Louisiana enacted at an extra session thereof, approved August 19, 1910, directing him to appear herein and to represent said Board of Levee Commissioners of the Tensas Basin Levee District in the prosecution of this suit, and also hereto annexed as a part hereof, respectfully represents:

That the Tensas Basin Levee District, composed of the Parishes of West Carroll, Franklin, Catahoula, Caldwell, Ouachita, Richland, Morehouse and La Salle, was created by Act Number Fifty-nine (59) of the Acts of the General Assembly of the State of Louisiana, approved July 3, 1886, and that said act was amended, with respect to Sections One (1), Nine (9), Thirteen (13), Fifteen (15) and Twenty (20), by Act Number Seventy-Seven (77) of the Acts of the General Assembly of the State of Louisiana, approved July 12, 1888; that said Act Fifty-nine (59) of 1886 was further amended by Act One Hundred and Three (103) of 1892; that said Act Fifty-nine (59) of 1886 was further amended by Act Seventy (70) of 1894; that said Act Fifty-nine of 1886 was further amended by Act One Hundred and Seventeen (117) of 1898; that said act was further amended by Act 20 of 1900, and that said Act Fifty-nine (59) of 1886 was again amended by Act Number Three Hundred and Eleven (311) of 1908, approved July 9, 1908.

Petitioner avers that the purpose of the creation of the said Tensas Basin Levee District was for the raising, by taxation or otherwise, of a revenue to protect the lands therein from inundation by the construction and maintenance of levees, and the Gover-
3 nor was directed to appoint one competent person, possessed of the requisites of a qualified elector, from each of the parishes then located in said levee district, which said persons were constituted a Board of Levee Commissioners, styled "Board of Levee Commissioners of the Tensas Basin Levee District," and they were constituted and created into a body politic, with corporate powers, having the right to sue in their corporate capacity, use a seal, and the power to do and perform every act for which the said Board of Commissioners was created; and the domicile of the corporation was fixed in the Town of Rayville, Richland Parish, Louisiana.

That Act Seventy-seven (77) of 1888, in order to provide additional means to carry out the purposes for which the said levee district was created, and to enable said Board of Commissioners to build or assist in building, either within or without the State, levees and other works of public improvement designed to aid in protect-

ing property in the said levee district from disastrous floods, did declare, in and by Section 2 thereof, "that in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable said Board to assist in developing, establishing and completing either within or without the State, a system of levees and other works of public improvement, designed to aid in protecting property in the Tensas Basin Levee District from disastrous floods, all lands now belonging, or that may hereafter belong, to the State of Louisiana, and embraced within the limits of the Tensas Basin Levee District as herein constituted, shall be, and the same hereby are, given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas Basin Levee District, whether said lands or parts of the lands originally granted by the Congress of the United States to this State, or whether said lands have been, or may hereafter be, forfeited to, or bought in by or for, or sold to, the State at tax sales for non-payment of taxes."

That it was made the duty, in and by the said act of the Legislature, of the register of the State Land Office and the auditor of the State, upon the request of the said Board of Levee Commissioners, or the president thereof, as provided in Section 2 of aforesaid act, "to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands thereby granted or intended to be granted and conveyed to said Board," and that the president of said Board was required by said act to "cause said conveyances to be properly recorded and that "when said conveyances are so recorded the title to said lands, with the possession thereof, shall from thenceforth, vest absolutely in the said Board of Levee Commissioners, its successors or grantees." Petitioner avers that, while the said Board of Levee Commissioners was granted power and authority to sell, mortgage, pledge, or otherwise dispose of said lands in such manner and at such times, and for such prices, as to the said Board would seem proper, it was intended that, whenever the Board of Levee Commissioners parted with said lands, it would be for an honest price and in an honest manner and for the best interests of the inhabitants of said Tensas Basin Levee District, whose representative it was.

Petitioner avers that, under the Constitution of 1879, and the Constitution of 1898, the State of Louisiana was charged with the erection, completion and maintenance of certain levee systems, and in order to more effectually discharge said duty, the Legislature of said State was authorized by the said Constitutions to create and organize one or more levee districts. That in pursuance of this constitutional direction in the matter of building and maintaining levees, and to more easily carry on this function, the said Tensas Basin Levee District was created, and the Board of Commissioners of the said levee district was likewise created, to perform and carry out these objects, and to discharge the duties prescribed by the various acts of the Legislature hereinabove referred to.

That the State of Louisiana became the owner of vast areas of land in the territory embraced in the several parishes composing

the Tensas Basin Levee District by Congressional grants commonly known as the swamp land grants; that a great deal of said land, after it became the property of the State, was never entered or homesteaded, and remained the property of the State, but that a great deal of it was homesteaded and purchased by settlers subsequent to its acquisition by the State; that in the period subsequent to the war between the States, and more especially in the seventies, many hundreds of thousands of acres of land were forfeited to the State of Louisiana for nonpayment of taxes under then existing laws; and, through various tax sales subsequent to the Constitution of 1879, the State became the owner of vast tracts of valuable lands, in addition to those which it still owned under the swamp land grants aforesaid in the said area embraced in the said Tensas Basin Levee District.

That it was the purpose of the Congressional grant, *hereinable* hereinabove referred to, that the swamp lands ceded to the States by the Federal Government should be used, or the proceeds thereof, for the construction and maintenance of levees and drainage systems.

Petitioner represents that the territory embraced in the said levee district was, during the years preceding 1893, subject to frequent inundations from the Mississippi River.

That the purpose of the formation of the said levee district was to enable the State, through the Board of Commissioners thereof, to raise money, by local taxation or contributions, for the building of levees to protect the particular area embraced in said levee district, and that the said Tensas Basin Levee District and said Board of the Tensas Basin Levee District were so created for the purpose of acting for the best interests of the inhabitants of said district, and as their representatives in all matters connected with their duties and functions under the law of their creation.

That the State of Louisiana, in 1888, owned, as aforesaid, nearly nine hundred thousand (900,000) acres of valuable lands in the said Tensas Basin Levee District, and, in order to better carry out the constitutional direction, and laws passed thereunder, with regard to the building of levees, and to furnish additional funds for that purpose, transferred the lands aforesaid to the said levee district, intending that the Board of Commissioners thereof would administer the same honestly and fairly, and sell the same for an honest price, and for the best interest and advantage of the inhabitants thereof, whose representative it was.

That, by Act One Hundred and Seventeen (117) of 1898, the domicile of the said Levee Board was moved from Rayville, Richland Parish, to Monroe, Ouachita Parish, and that, soon after the approval of said act, the said Board of Commissioners was recognized, and the following persons became members of the said Board; that is to say:

John P. Parker, of Ouachita; J. Q. Graves, of Caldwell; R. E. Yancy, of Catahoula; E. M. Hicks, of Franklin; Jno. A. Hemler, of Richland; W. A. Collins, of Morehouse, and W. C. Buchanan, of West Carroll; and that the said Board did then elect Jno. P. Parker, of Ouachita, president; Jno. F. Loveless, of

Richland, secretary, and E. T. Lamkin, of Ouachita, attorney. Petitioner avers, however, that, by Act No. 311 of 1908, the General Assembly of the State of Louisiana fixed and established the domicile of said Board at Rayville, in the Parish of Richland, and that none of the aforementioned persons are members of your petitioner, the Board of Levee Commissioners of the Tensas Basin Levee District.

That, in 1894, Jos. W. Simms, of Richland Parish, was appointed by the Levee Board aforesaid as its land agent, and, as such, immediately entered upon the discharge of his duties; that he was authorized by the said Levee Board, in his said contract and appointment, to find a purchaser for the lands so placed under the control of the Levee Board, aforesaid, at a minimum price of fifty (50) cents an acre; that, in 1896, said Simms entered into an agreement with one James W. Brown, of Brownsville, in the State of Tennessee, by which said Brown was to assist the said Simms in finding a purchaser for these lands, and was to share in said Simms' commission upon the sale.

That in September, 1898, a fraudulent and collusive scheme was entered into by and between the said Jas. W. Brown, Jos. W. Simms, land agent aforesaid; Jas. D. Lacey, a resident of Grand Rapids, Michigan; S. Wood Beal, a resident of Grand Rapids, Michigan; Thomas Hume, Ransome C. Luce, T. Stewart White, Thomas Friant, Jno. C. Ruge, Jos. J. Tucker and Anton G. Hodenpyl, who resided out of the State of Louisiana in 1898, and who are still nonresidents of the State of Louisiana, and with certain members of the Board of Commissioners of the Tensas Basin Levee District, and certain of its officers, agents and employees, whereby all of the lands owned by and situated in said district and under the control of said district should be sold and delivered for a nominal consideration, and at a price far less than the actual value of said property, to a company or corporation to be thereafter organized; that, in furtherance of the said collusive and fraudulent scheme, a limited-liability partnership was formed under the laws of the State of Michigan, and domiciled in the City of Grand Rapids, said State, and composed of Ransome C. Luce, Thomas Hume, T. Stewart White, Jno. C. Rugee, Thomas Friant and Anton G. Hodenpyl, S. Wood
7 Beal and Jas. D. Lacey; that Jas. D. Lacey and S. Wood Beal were placed in active charge of the affairs of the said concern, which was styled, in the articles of the association, "The Tensas Delta Land Company, Limited;" that the agreement to form the said company was entered into upon the part of the said incorporators on or about the 21st day of October, 1898, but that the articles of association were not signed by the said parties until the 29th day of October, 1898; that a special meeting of the aforesaid Levee Board was called to convene at Monroe, Ouachita, Parish, Louisiana, on the 1st day of November, 1898; that previous to the meeting of the said Levee Board, the agents and representatives of the said Tensas Delta Land Company, Limited, and others interested in carrying out the aforesaid fraudulent scheme to transfer the aforesaid lands to the said land company for a nominal consideration,

and for much less than the actual value of the said property, were actively engaged in interviewing the several members of the said Levee Board, and in securing promises and pledges from them to vote in favor of the proposed sale; that the said Tensas Delta Land Company, Limited, was, to the knowledge of the aforesaid Board of Levee Commissioners of the Tensas Basin Levee District, willing to pay two hundred thousand dollars ($200,000) for the said lands, although worth, at the time, more than that amount; but that it actually purchased the same for one hundred and thirty thousand dollars ($130,000) through fraud, both on the part of the said Tensas Delta Land Company, Limited, and of said Tensas Basin Levee District, and which fraud and fraudulent practices consisted principally in the fact that the sum of twenty thousand dollars in cash and eighteen thousand, seven hundred and fifty dollars ($18,750) of the capital stock of the Tensas Delta Land Company, Limited, was used by the said Tensas Delta Land Company, Limited, by being given to certain of the members, officers and agents of said Levee Board to influence, and which did influence, a sufficient number of the said members of the said Board of Commissioners of the Tensas Basin Levee District to vote in favor of said sale, which was thereafter made in the carrying out of said fraud and fraudulent scheme.

That, in furtherance of, and in the actual consummation of, the said fraudulent and collusive scheme, the said Board of Levee Commissioners adopted a resolution on November 4, 1898, accept-
8 ing a proposition of J. W. Brown, agent of the Tensas Delta Land Company, Limited, to buy the land of the said Levee Board for the sum of one hundred and thirty thousand dollars ($130,000), of which thirty thousand dollars would be paid cash, and the balance in three equal annual payments, and authorized John P. Parker, the president of said Levee Board, to sign the necessary deeds for same; and, accordingly, seven deeds, one for each of the seven parishes then composing the levee district, were actually signed on November 9, 1898, hereinafter more particularly described.

That the lands owned by the said Levee Board in the said levee district were worth, at the time they were fraudulently and illegally conveyed to the said land company, as aforesaid, at least five hundred thousand dollars ($500,000), and, notwithstanding said fact, the said lands were illegally and fraudulently conveyed to the land company for the sum of one hundred and thirty thousand dollars ($130,000), of which thirty thousand dollars ($30,000) was paid in cash, and the remainder in three equal payments, due in one, two and three years.

That the said levee district had not been visited by any overflow since 1893, and that the said levee district was not in urgent need of funds in 1898, and that a sale of the lands at that time, even for an adequate price, was neither urgent nor desirable; and, furthermore, that the amount received by it in cash was not sufficient to be of material benefit.

Your petitioner avers, that, by reason of the aforesaid fraudulent

and corrupt dealings of the said Levee Board and the said land company, the inhabitants and citizens and property owners of the Tensas Basin Levee District have been injured and damaged, and that it is the bounden duty of your petitioner to take appropriate action through the courts to annul the said fraudulent sales, and to recover for the inhabitants, citizens and taxpayers of the said Tensas Basin Levee District, and for your petitioner, who is the legal representative of said inhabitants, citizens and taxpayers, the lands so fraudulently and illegally conveyed to the said land company by the said Levee Board, as aforesaid.

Your petitioner avers that, in consummation of the said fraudulent and collusive scheme, and in the further carrying out of the fraudulent purposes of the Tensas Delta Land Company,
9 Limited, and the said Board of Commissioners, and acting under and by virtue of a resolution illegally and fraudulently adopted by the said Board of Commissioners of the Said Tensas Basin Levee District on November 4, 1898, as aforesaid, Jno. P. Parker, president of the said Levee Board, did, on the 9th day of November, A. D., 1898, before R. A. Young, clerk of the Sixth District Court, and ex-officio notary public in and for the Parish of Ouachita, State of Louisiana, sign, and execute seven (7) certain deeds or acts of sale, as follows:

One, being dated and passed as aforesaid, covering certain lands in the Parish of West Carroll, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Seventh District Court and ex-officio recorder in and for the Parish of West Carroll, State of Louisiana, on November 14, 1898; and which said deed was duly recorded in Notarial Book D, page 168 et seq., and which said deed, with the resolutions fraudulently adopted on November 4, A. D. 1898, as aforesaid, is, by reference and description made a part hereof for the purposes of attack, and for all other lawful purposes, and is marked "Exhibit A."

One, being dated and passed as aforesaid, covering certain lands in the Parish of Richland, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Seventh District Court and ex-officio recorder in and for the Parish of Richland, State of Louisiana, on November 11, 1898, and which said deed was duly recorded in Notarial Book Q, of the Notarial Records of Richland Parish et seq.; and which said deed, with the resolutions fraudulently adopted on November 4, A. D. 1898, as aforesaid, is, by reference and description, made a part hereof for the purposes of attack and for all other lawful purposes, and is marked "Exhibit B."

One, being dated and passed as aforesaid, covering certain lands in the Parish of Morehouse, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Sixth District Court and ex-officio recorder in and for the Parish of Morehouse, State of Louisiana, November 12, A. D. 1898, and which said deed was duly recorded in Notarial Book V, page 86 et seq., of the Notarial Records of Morehouse Parish, Louisiana, and which said deed,

with the resolutions fraudulently adopted on November 4,
10 A. D. 1898, as aforesaid, is by reference and description made a part hereof for purposes of attack and for all lawful purposes, and is marked "Exhibit C."

One, being dated and passed as aforesaid, covering certain lands in the Parish of Catahoula, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Eighth District Court and ex-officio recorder in and for the Parish of Catahoula, State of Louisiana, and was duly recorded in Conveyance Book No. 7, page 345 et seq., of Catahoula Parish, Louisiana, and which said deed, with the resolutions fraudulently adopted on November 4, A. D. 1898, as aforesaid, is, by reference and description, made a part hereof for purposes of attack, and for all other lawful purposes, and is marked "Exhibit D."

One, being dated and passed as aforesaid, covering certain lands in the Parish of Ouachita, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Sixth District Court and ex-officio recorder in and for the Parish of Ouachita, State of Louisiana, on November 10, 1898, and which deed was duly recorded in Conveyance Book No. 39, page 609 et seq., of the records of Ouachita Parish, Louisiana; and which said deed, with the resolutions fraudulently adopted on November 4, 1898, as aforesaid, is, by reference and description, made a part hereof for purposes of attack and for all other lawful purposes, and is marked "Exhibit E."

One, being dated and passed as aforesaid, covering certain lands in the Parish of Franklin, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Eighth District Court and ex-officio recorder, in and for the Parish of Franklin, State of Louisiana, and was duly recorded in Notarial Book P, page 204 et seq., of Franklin Parish, Louisiana, on the 19th day of November, 1898; and which said deed, with the resolutions fraudulently adopted on November 4, 1898, as aforesaid, is, by reference and description, made a part hereof for purposes of attack, and for all other lawful purposes, and is marked "Exhibit F."

One, being dated and passed as aforesaid, covering certain lands in the Parish of Caldwell, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Fifth District Court and ex-officio recorder in and for the Parish of Caldwell, State of Louisiana, and was duly recorded in Conveyance Book K, page 573 et seq., of the records of Caldwell Parish, Louisiana;
11 and which said deed, with the resolutions fraudulently adopted on November 4, 1898, as aforesaid, is, by reference and description, made a part hereof for purposes of attack and for all other lawful purposes, and is marked "Exhibit G."

Your petitioner avers that there was attempted to be transferred by the said seven deeds, approximately eight hundred and eighty-five thousand and forty and 31/100 (885,040.31) acres of land, for a price and sum amounting to one hundred and thirty thousand dollars ($130,000.00), of which thirty thousand dollars ($30,000.00)

was paid in cash, and the remainder in three equal annual payments, with six (6) per cent. per annum interest from date until paid.

Your petitioner avers that the lands described in the said seven deeds, aggregating the acreage as stated, for the price and sum as hereinbefore set forth, yielded an average price to the said Board of Commissioners of about fourteen and one-half cents (14½) cents per acre, and that the Levee Board aforesaid received for same about fourteen and one-half cents an acre, or the sum of one hundred and thirty thousand dollars ($130,000.00).

Your petitioner avers that the said Tensas Delta Land Company, Limited, has, since its said fraudulent and illegal acquisition of the lands described and set forth in the said acts of sale as aforesaid, sold to various and divers persons, firms and corporations a number of tracts of the said lands so fraudulently and illegally transferred to it by the said Board of Commissioners of the Tensas Basin Levee District, and in the parishes of said district, as will be seen by the various acts of transfer of said lands to said purchaser, as well as by descriptive and certified lists of said lands, with the price at which the same were sold, marked Exhibits H, I, J, K, L, M, N, and O, hereto annexed for reference and as part hereof, and that the said sales from the said Tensas Delta Land Company to the various purchasers from it, as aforesaid, show that said company received for the lands sold by it to the said purchasers the sum of four hundred and eighty thousand, eight hundred and fifty-four and 50/100 dollars ($480,854.50), as is shown by Exhibit P, hereto annexed for reference.

Petitioner avers, however, that it has good reason to believe and does believe, and so avers, that, although the said acts of sale show
12 that the amount received by said Tensas Delta Land Company, Limited, as the purchase price for the lands described herein, was the sum of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars.

Now, petitioner avers that, without in any manner ratifying the sales of said lands thus made by the Tensas Delta Land Company, Limited, to the various purchasers from it, as aforesaid, but, on the contrary, reiterating the allegations heretofore made in respect to the fraudulent and collusive practices and acts of said company and others in getting possession of said lands, petitioner is entitled to recover from said Tensas Delta Land Company, Limited, the aforesaid amount of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars $480,854.50/100, together with such additional amounts as may be shown on the trial of this case to have been received as aforesaid by said company, less the sum of one hundred and thirty thousand dollars ($130,000.00) received by the predecessors of your petitioner as the price received by them as aforesaid for the entire body of lands fraudulently and illegally sold to said Tensas Delta Land Company, Limited, and that your petitioner is entitled to have the said illegal and fraudulent sales made by the said Board of Commissioners of the Tensas Basin Levee District to said Tensas Delta Land Company as aforesaid, on the 9th November, 1898, set aside and annulled as to the balance of the lands

so fraudulently and illegally transferred to said company, and which have not been disposed of by it, and which petitioner understands and believes, and so avers, amount to about four hundred and thirty-two thousand, one hundred and nine 95/100 acres (432,109.95) as will be fully shown by Exhibit "P," already heretofore referred to as being annexed hereto as part hereof, as well as by Exhibits Q, R, S, T, U, V, W and X, hereto annexed for reference and greater certainty of description.

Your petitioner avers further that the lands which it owned in the aforesaid parishes composing the Tensas Basin Levee District and so illegal-y and fraudulently conveyed to the Tensas Delta Land Company, Limited, as aforesaid, were, at the time they were so fraudulently disposed of, worth more than one dollar per acre, and that the lands still remaining unsold by the said Tensas Delta Land Company, Limited, and which were so fraudulently and illegally conveyed to it by the Tensas Basin Levee Board, the pred-

13 ecessors of your petitioner, as aforesaid, are worth fully ten dollars per acre, or the sum of four million, three hundred and twenty-one thousand and ninety-nine 50/100 dollars ($4,321,099.50).

Now, your petitioner avers that, aside from the fact that the aforesaid conveyances to the Tensas Delta Land Company, Limited, from the Tensas Basin Levee District of the lands aforesaid in the parishes composing said Tensas Basin Levee District, were conceived in, and consummated through and by fraud and fraudulent, corrupt and illegal practices, as aforesaid, the same would be and were, a mere disguised donation made by the commissioners of said levee district to said Tensas Detal Land Company, Limited, as the lands attempted to be disposed of were not less than one dollar ($1.00) per acre at the time, although sought to be disposed of for fourteen and one-half cents (14½c) per acre.

Petitioner avers, further, that, if this Honorable Court should hold that said conveyances of said lands in said parishes should not be set aside for cause, and by reason of the aforesaid fraud, and fraudulent, corrupt and illegal practices, and should further hold that the same are *no* [not] really and in fact a disguised donation of the lands described therein by said Board of Commissioners to said Tensas Delta Land Company, Limited, but were really intended as sales to said land company, then, and in that event, and in the alternative, petitioner avers that the said acts of sale are now, and were at the time, and have always been absolutely null and void for lesion beyond moiety, as the amounts stated in said acts of sale as the purchase price paid for said property by said Tensas Delta Land Company, Limited, were, at the time, and are now, far below one-half of the real and just value of said property.

Petitioner avers, further, that the said Tensas Delta Land Company, Limited, is a limited liability partnership created under the laws of the State of Michigan, and that its domicile is in the City of Grand Rapids, in said State, but that it has an agent in the Parish of Ouachita, State of Louisiana, in the person of Fred G. Hudson, who resides in said parish and State, upon whom process may

be served, and that it is suable in said Parish of Ouachita, State aforesaid, through process served upon its said agent.

The premises considered, your petitioner prays that said Tensas Delta Land Company, Limited, be cited, according to law, through its said agent, Fred G. Hudson, and served with a certified copy of this petition; and that, after due and legal delays, petitioner do have and recover judgment against the said Tensas Delta Land Company, Limited, annulling, avoiding and setting aside the aforesaid conveyances, fraudulently and illegally executed on the 9th day of November, A. D. 1898, whereby certain lands in the parishes aforenamed, and fully described in the deeds hereinabove referred to, hereto annexed, were fraudulently and illegally conveyed to the said Tensas Delta Land Company, Limited, by the said Board of Commissioners of the Tensas Basin Levee District, and decreeing and recognizing your petitioner to be the owner of all of said lands so fraudulently and illegally conveyed by said deeds to the said Tensas Delta Land Company, Limited, and as yet unsold by said Tensas Delta Land Company, Limited, and fully and particularly described in the various exhibits hereto annexed as part hereof; and, further, that petitioner do have and recover judgment against the said Tensas Delta Land Company, Limited, in the sum of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars ($480,854.50), being the price of lands sold by the said Tensas Delta Land Company, Limited, in all of said parishes from the lands fraudulently and illegally acquired by it from the Board of Commissioners of the Tensas Basin Levee District on November 9, 1898, together with five (5) per cent. per annum interest on the various amounts coming into the possession of the said Tensas Delta Land Company, Limited, as the proceeds of said sales, from the time the said Tensas Delta Land Company, Limited, sold said lands until the final payment of same to your petitioner, together with such further and additional amount as may be shown on the trial of this case to have been received as aforesaid by said company, less, however, the sum of one hundred and thirty thousand dollars, the amount of the purchase price of the lands sold by the Board of Commissioners of the Tensas Basin Levee District to the Tensas Delta Land Company, Limited, by the various acts of sale aforesaid, passed and executed on the 9th November, 1898, with like interest thereon from that date.

Petitioner prays further, however, that, in the event this Honorable Court should hold that said conveyances and transfers of said lands were not conceived in, and consummated through and by means of, fraud, and fraudulent and illegal and corrupt practices, as herein alleged, then, and in that event, petitioner prays that the aforesaid notarial acts of November 9, 1898, be decreed and adjudged not to be sales of said lands by the said Board of Commissioners aforesaid to said Tensas Delta Land Company, Limited, but that they be held and adjudged to be a disguised donation of said lands to it, and that, for said reason, the same be set aside and annulled.

Petitioner further prays, in the alternative, that, in the event this

Honorable Court should hold and find that said acts of November 9, 1898, were not a donation in disguise, but that they were in reality conveyances to said Tensas Delta Land Company, Limited, of the lands therein described, then, in that event, petitioner prays that the said conveyances sought to be made in and by the same, be, nethertheless, set aside and annulled for lesion, for the reasons already more fully and specifically set forth herein.

And for costs, and for all and general relief.

WALTER GUION,
Attorney General.
M. C. THOMPSON,
Attorney of the Board of Levee Commissioners of the Tensas Basin Levee District.

A true copy of original.

[SEAL.] W. A. WRIGHT,
Dy. Clerk District Court.

BATON ROUGE, 4th January, 1911.

Hon. Walter Guion, Atty. General, New Orleans, La.

DEAR SIR: By virtue of the law which confers upon me the authority and power to direct you as attorney general to bring suits for the recovery of lands belonging to any subordinate sub-division of the State, I do hereby direct and request that you do bring suit for the purpose of recovering the lands sold by the Tensas Basin Levee Board to the Tensas Delta Land Company, and for the recovery of a portion of which a suit was brought by the State of Louisiana against the Tensas Delta Land Company in the District Court for the Parish of Richland, and which suit was held
16 by the Supreme Court of the State of Louisiana to have been improperly brought by the State. You will understand that I desire you to institute suit for the use and benefit and in the name of the Tensas Basin Levee Board.

Respectfully yours,
J. Y. SANDERS, *Governor.*

A true copy of original.

[SEAL.] W. S. WRIGHT,
Dy. Clerk District Court.

Filed Oct. 7, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

RAYVILLE, LA.

The following resolution was offered by Mr. Davenport and adopted :

Whereas, the Supreme Court of this State, in the case of the State of Louisiana vs. The Tensas Delta Land Co., Ltd., *was* held that the State was not the proper plaintiff and without authority in law to maintain the said suit, but that the commissioners of the Tensas Basin Levee District were the proper parties to bring said suit:

Therefore, be it resolved by the said Board of Commissioners of

the Tensas Basin Levee District, that a suit be instituted by this Board and through its proper officers against the Delta Land Company, Ltd., for the recovery of the lands mentioned and described in the petition in the case of the State of Louisiana vs. the said Tensas Delta Land Company, Ltd., and to this end and for this purpose M. C. Thompson, attorney for this Board, be and he is hereby authorized and directed to at once get into communication with the attorney general of the State, and with him prepare, file and prosecute to a finality the said suit against the Tensas Delta Land Company, Ltd., for the recovery of said lands.

Be it further resolved, that the president and the said attorney be and they are hereby authorized to do and perform any
17 and all acts necessary in order to get this case properly before the courts and to have it decided on its merits as speedily as the ends of justice and legal delays will permit.

I hereby certify the above and foregoing to be a true and correct copy of the resolution adopted by the Board of Commissioners of the Tensas Basin Levee District in regular session assembled on July 14, 1910.

H. A. MANGHAM,
Sec. Tensas Basin Levee Board.

A true copy of original.

[SEAL.]

W. S. WRIGHT,
Dy. Clerk District Court.

The State of Louisiana, Parish of Ouachita, Sixth District Court.

No. 7612.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LIMITED, Through F. G. Hudson, Agent, of the Parish of Ouachita.

You are hereby summoned either to comply with the demand contained in the petition, of which a certified copy accompanies the citation, or to deliver your answer in writing to said petition in the office of the clerk of the Sixth District Court, in and for the Parish of Ouachita, which office is in the City of Monroe, said parish and State, within ten days after the service of this petition, with one additional*s* day's delay for every ten miles that your residence is distant from this Court; not to exceed in all 15 days.

Witness the Honorable J. P. Madison, Judge of said Court, this the 15th day of September, A. D. 1911.

[SEAL.]

W. S. WRIGHT,
Dy. Clerk of Sixth District Court.

Indorsed: No. 7612. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Basin Land Co., Ltd. Original

Citation to Tensas Delta Land Co., Ltd. Filed 29 day of Sept.,
18 1911. W. S. Wright, Dy. Clerk District Court.

Reverse side of citation: Received this citation, together with a certified copy of same and a certified copy of the original petition, in office on the 15th day of Sept., A. D. 1911, and on the 28th day of Sept., A. D. 1911, I made personal service of citation and petition, by delivering the said certified copies to F. G. Hudson, agent, Tensas Delta Land Co., Ltd., defendant, in person, in the Parish of Ouachita, Louisiana, at his office, about — miles from the court house. Sheriff's fees serving of petition and citation, $1.00; mileage — miles, at 7c per mile — ; total, $—. T. A. Grant, Dy. Sheriff of Ouachita Parish.

Filed Oct. 7, 1911. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

Sixth Judicial District Court, Parish of Ouachita, State of Louisiana.

No. 694.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT

vs.

TENSAS DELTA LAND CO., LTD.

To the Honorable James P. Madison, Judge of said Court:

The petition of James D. Lacy, S. Wood Beal, James Hume, Thomas Friant, Joseph J. Tucker, T. Stewart White, James R. Wylie, Charlotte C. Luce, Morton H. Luce, each and all citizens of the State of Michigan; John C. Ruge, a citizen of the State of Wisconsin; Anton C. Hodenpyl, a citizen of the State of New York; George N. Garvey, a citizen of the State of Tennessee; Gregory M. Luce, a citizen of the State of Alabama, and Victor Thrane, a citizen of the State of Illinois, associated and doing business together as a limited partnership under the laws of the State of Michigan, and under the name and style of Tensas Delta Land Company, Limited, with due respect showeth:

19 That your petitioners are now and were at the time this suit was brought respectively citizens of the State of Michigan, Wisconsin, Illinois, New York, Alabama and Tennessee, as above particularly and in detail set forth, and non-residents and none of them citizens of the State of Louisiana.

That plaintiff, as alleged in its petition, is a corporation created by and organized under the laws of the State of Louisiana, and as such is a citizen of the State of Louisiana, with its domicile at Rayville, in the Parish of Richland, in the jurisdiction of the Circuit Court of the United States for the Western District of Louisiana at Monroe, and an inhabitant of said district, which is the district covering the Parish of Ouachita in the courts of which this suit has been brought and is now pending.

That the object of said suit is to recover from your petitioners the

ownership of a large quantity of lands described in the exhibits attached to and made a part of the petition in said suit and a large sum of money alleged to have been received by your petitioners from the sale, by them, of part of said lands purchased from the plaintiffs herein. And that said suit is a suit constituting a civil suit, and the amount in dispute therein exceeds the sum of two thousand dollars, exclusive of interest and costs.

That said suit is a civil suit between citizens of different States, which could originally have been brought in the Circuit Court of the United States for the Fifth Circuit for the Western District of Louisiana, at Monroe, Louisiana, and your petitioners, defendants in said suit, each and all being citizens of a different State from the plaintiff herein, have a right to remove said cause from the Sixth Judicial District Court of the Parish of Ouachita, and State of Louisiana, in which the same is now pending, into the courts of the United States, where they have a legal and constitutional right to have the said cause heard and to make their defense of said action. And your petitioners are therefore entitled to remove said cause into the Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana, at Monroe, Louisiana, and desire so to remove the same.

Wherefore, your petitioners herewith offer bond in the sum of one thousand dollars, with good and sufficient security, for the entering in said Circuit Court of the United States, aforesaid, on the first
20 day of its next session, a copy of the record in this cause, and for paying all costs that may be awarded by said Circuit Court if said Court shall decide that the case was improperly removed thereto; and your petitioner prays that this Honorable Court will proceed no further herein except make an order for the removal of this cause to the Circuit Court of the United States, and to accept said security and bond and to cause the record herein to be moved to said Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana, at Monroe, and your petitioners will ever pray.

FARRAR, JONAS, GOLDSBERG & GOLDSBOROUGH,
HUDSON, POTTS & BERNSTEIN,
Attorneys for Petitioners.

Affidavit.

Personally came and appeared before me, the undersigned authority, Frederick G. Hudson, who being duly sworn, deposes and says: That he is the agent and attorney in the State of Louisiana of the petitioners in the above petition for removal, all of whom are absent from the State of Louisiana, and that all the facts and allegations in said petition contained are true and correct.

FREDERICK G. HUDSON.

Sworn to and subscribed before me this 28th day of Sept., A. D. 1911.

[SEAL.]

JNO. J. POTTS,
Notary Public.

Filed Oct. 7, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

Order.

The foregoing petition and other proceedings heretofore had in this cause considered, it is ordered by the Court that the bond
21 tendered by the petitioners in the above entitled and numbered cause be accepted, and that this cause be and the same is hereby removed into the Circuit Court of the United States for the Western District of Louisiana, at Monroe, at the next term of said Court to be holden.

Ordered and signed this 28th day of Sept., 1911.

J. P. MADISON,
Judge, Sixth Judicial District Court of Louisiana.

Filed Oct. 7, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

STATE OF LOUISIANA,
Parish of Ouachita:

Know all men by these presents, that we, James D. Lacey, S. Wood Beal, Thomas Hume, Thomas Friant, Joseph J. Tucker, T. Stewart White, James R. Wylie, Charlotte C. Luce, Morton H. Luce, each and all citizens of the State of Michigan; John C. Ruge, a citizen of the State of Wisconsin; Anton G. Hodenpyl, a citizen of the State of New York; George N. Garvey, a citizen of the State of Tennessee; Gregory M. Luce, a citizen of the State of Alabama, and Victor Thrane, a citizen of the State of Illinois, associated and doing business as a limited partnership under the laws of the State of Michigan, and under the name and style of Tensas Delta Land Company, Limited, as principal, and — I. Baer and E. Fudickar, a surety, are held and firmly bound unto the Board of Levee Commissioners of the Tensas Basin Levee District in the penal sum of one thousand dollars, for the payment of which well and truly to be made unto the said Board of Levee Commissioners of the Tensas Basin Levee District, their successors and assigns, bind ourselves, our heirs, representatives and assigns jointly and severally in solido by these presents:

Yet, upon these conditions, we, said principals, the said J. D. Lacey and others having petitioned the Sixth Judicial District Court in and for the Parish of Ouachita, State of Louisiana, for the removal of a certain cause pending therein, wherein the said Board of Levee Commissioners of the Tensas Basin Levee District is plaintiff, and the said J. D. Lacey and others, *a* limited partners,
22 under the style and firm name as above set forth, are defendants, to the Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana, at Monroe.

Now, therefore, if the said J. D. Lacey, and others, limited partners, aforesaid, shall enter into said Circuit — the United State

on the first day of its next session at Monroe, a copy of the record in said cause, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States if the said Court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void; otherwise in full force and effect.

Witness our hands and seals this 28th day of Sept., A. D. 1911.

I. BAER,
E. FUDICKAR.

Attest:
J. W. ELDER,
W. N. POTTS.

STATE OF LOUISIANA,
Parish of Ouachita:

I. Baer and E. Fudickar being duly sworn deposes and says that they are citizens and residents of the State of Louisiana and of the Parish of Ouachita; that they signed the foregoing bond for removal for the purposes therein set forth, and that they are worth more than the sum of one thousand dollars each, after all his just liabilities, debts and exemptions are deducted.

I. BAER,
E. FUDICKAR.

Sworn to and subscribed before me this 28th day of Sept., A. D. 1911.

[SEAL.] JNO. J. POTTS,

Filed Oct. 7, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

23 U. S. Circuit Court for the Western District of Louisiana, at Monroe.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

Now comes the defendants in this cause, through their undersigned solicitors, Farrar, Jonas, Goldsborough & Goldsberg, and Hudson, Potts & Bernstein; and

On suggesting to this Honorable Court that the present cause originated in the Sixth Judicial District Court of the State of Louisiana for the Parish of Ouachita, and was by these defendants removed into this Honorable Court on the ground of diversity of citizenship; and

On further suggesting to the Court that this cause is in nature and in substance a proceeding in equity whereby the plaintiff seeks to annul and set aside for fraud and lesion a sale of a large body of lands situated in this district, of which the defendants are now owners; and

On further suggesting to the Court that the shape of the pleadings, as they now stand as *as* filed in the said Court, are not adapted to the proceedings in equity required in this Court by the rules of the Supreme Court of the United States and that the said petition should be reformed and recast so as to make the same a bill in equity in this Court:

It is ordered by the Court that the plaintiff do show cause on the first day of Oct. term, 1911, at Shreveport, why the pleadings in this cause should not be recast in the form as a bill in equity.

It is further ordered, that the defendants be relieved from filing any pleadings in this cause until this motion can be disposed of.

ALECK BOARMAN, *Judge.*

FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
HUDSON, POTTS & BERNSTEIN,
Solicitors for Defendants.

24 Indorsed: No. 649. United States Circuit Court, Fifth Judicial Circuit, Western District of Louisiana. Board of Commissioners of the Tensas Basin Levee Dist. vs. Tensas Delta Land Co., Ltd. Order to Show Cause 1st Day Oct. Term, at Shreveport, 1911, Why Pleadings Should Not be Reformed.

Filed Oct. 9, 1911. Leroy B. Gulotta, Clerk, United States Circuit Court.

Marshal's Returns.

Marshal's Docket No. 1040.

Received this rule to show cause Oct. 9, 1911, and executed the same date at Monroe, La., by delivering a copy of this writ, certified under seal of the Court, to the within named Board of Commissioners of the Tensas Basin Levee District, through its presidents, T. B. Gilbert, Jr.

B. INGOUF,
U. S. Marshal.
By J. M. GRIMMET,
Chief Deputy.

Filed Oct. 11, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana. Entered folio 114.

No. —. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS LAND CO., LTD.

Please enter my appearance as solicitor for plaintiff in the foregoing cause.

R. G. PLEASANT,
Assistant Att'y Gen'l, State of La.

To the Hon. Leroy B. Gulotta, Clerk, U. S. Cir. Court.

25 Filed Oct. 9, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

Indorsed: No. 694. U. S. Cir. Court, 5th Cir., West. Dist. of Louisiana. Board of Commissioners of Tensas Basin Levee Dist. vs. Tensas Delta Land Co., L't'd. Appearance of R. G. Pleasant, Asst. Att'y Gen'l as Sol'r for Plaintiff. Filed Oct. 9, 1911. Leroy B. Gulotta, Clerk, U. S. Cir. Court.

U. S. C. C., Western Dist. of La.

#694. In Equity.

BOARD OF COMMISSIONERS TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND CO., LTD.

In this cause by consent of parties, it is agreed that the plaintiff and defendant waives the order to recast the pleadings and plaintiff consents to so recast same as to conform to the equity rules and practice as laid down by the rules of the Supreme Court of the United States, the same as recast to be filed by Oct. 23/11, at which time, when filed, the defendant agrees to accept service of said bill as recast.

R. G. PLEASANT,
M. C. THOMPSON,
Solicitors for Plaintiff.
HUDSON, POTTS & BERNSTEIN,
FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
Solicitors for Def'ts.

Filed Oct. 10, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

Indorsed: No. 694. U. S. Cir. Court 5th Cir., West. Dist. of La. Board of Comr. of the Tensas Basin Levee Dist. vs. Tensas Delta

Land Co., L't'd. Agreement by Counsel as to Reforming Pleadings. Filed Oct. 10, 1911. Leroy B. Gulotta, Clerk, U. S. Cir. Court.

26 United States Circuit Court, Western District of La.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

It is hereby stipulated between the solicitors for the complainant and the solicitors for the defendant that the complainant shall have until the rule day in November to recast and amend the pleadings in this cause so as to make them conform to the rules of equity pleadings, etc., and the clerk is hereby instructed to enter this stipulation in the Chancery Order Book.

WALTER GUION,
Att'y General, Solicitor for Complainant.
FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
HUDSON, POTTS & BERNSTEIN,
Sol'rs for Defendants.

Indorsed: No. 694. In Equity. United States Circuit Court, Western District of Louisiana. Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Ltd. Stipulation as to Complainant Recasting Pleading. Filed Oct. 18, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, folio 453.

27 In the Honorable the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, Monroe Division.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

On motion of Walter Guion, attorney general of the State of Louisiana, and M. C. Thompson, attorney for the Board of Levee Commissioners of the Tensas Basin Levee District, solicitors for complainant, and on showing to the Court that the defendant has not yet demurred, plead or answered, that complainant desires to file a

supplemental and amended bill, asks leave to do so, and presents herewith said supplemental and amended bill.

It is ordered that leave be and the same is hereby granted to said complainant, the Board of Levee Commissioners of the Tensas Basin Levee District, to file an amendment to its bill of complaint in the above entitled action attached to the motion for such leave.

Dated this 2d day of November, 1911.

ALECK BOARMAN, *Judge.*

Indorsed: No. 694. In Equity. United States Circuit Court. Fifth Judicial Circuit, Western District of Louisiana. Board of Levee Commissioners of Tensas Basin Levee District vs. Tensas Delta Land Co., L't'd. Order Allowing Amended Bill of Complaint. Filed Nov. 2, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, folio 458.

28 In the Honorable United States Circuit Court for the Fifth Circuit and Western District of Louisiana, Monroe Division.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT

vs.

TENSAS DELTA LAND COMPANY, L'T'D.

To the Honorable the Judges of the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, Monroe Division:

The Board of Levee Commissioners of the Tensas Basin Levee District, a citizen of the State of Louisiana and a corporation created by, and existing under and by virtue of the laws of said State, as more fully hereinafter set forth, brings this, its bill of complaint, as well as its amendment of its original bill of complaint (being the petition filed by complainant in the Honorable Sixth Judicial District Court of the State of Louisiana and Parish of Ouachita) against the Tensas Delta Land Company, Limited, a citizen of the State of Michigan, and, thereupon, and in compliance with the order of this Honorable Court, entered on the 9th day of October, 1911, directing complainant to recast its pleadings in this cause so as to conform to the rules of practice in equity as laid down by the rules of the Supreme Court of the United States, your orator complains and makes amendment to said bill of complaint herein as follows, and says:

1.

Your orator is a corporation created by, and existing under and by virtue of, Act No. 59 of the Acts of the General Assembly of the State of Louisiana, approved July 3rd, 1886, and resides and has its domi-

cile at Rayville, in the Parish of Richland, State of Louisiana, and that your orator appears herein under and by virtue of a resolution duly and regularly adopted at a meeting of its said Board on the 14th day of July, 1910, a duly certified copy of which is hereto annexed as part thereof, directing the institution of this suit, which is also brought by the attorney general of the State of Louisiana, who appears herein for the purpose of representing your orator
29 under and by virtue of the written authority and instruction of the Governor of the State of Louisiana, dated the 4th January, 1911, and issued under the provisions of Act No. 3 of the Acts of the General Assembly of the State of Louisiana enacted at an extra session thereof, approved August 19th, 1910, directing him to appear herein and to represent your orator in the prosecution of this suit.

2.

That the Tensas Basin Levee District, composed of the Parishes of West Carroll, Franklin, Catahoula, Caldwell, Ouachita, Richland, Morehouse and LaSalle, was created by Act No. 59 of the Acts of the General Assembly of the State of Louisiana, approved July 3rd, 1886, and that said act was amended, with respect to Sections One (1), Nine (9), Thirteen (13), Fifteen (15) and Twenty (20), by Act No. Seventy-seven (77) of the Acts of the General Assembly of the State of Louisiana, approved July 12th, 1888; that said Act Fifty-nine (59) of 1886 was further amended by Act One Hundred and Three (103) of 1892; that said Act Fifty-nine (59) of 1886 was further amended by Act Seventy (70) of 1894; that said Act Fifty-nine (59) of 1886 was further amended by Act One Hundred and Seventeen (117) of 1898; that said Act Fifty-nine (59) of 1886 was further amended by Act Twenty (20) of 1900; and that said Act Fifty-nine (59) of 1886 was again amended by Act Number Three Hundred and Eleven (311) of 1908, approved July 9, 1908.

3.

That the purpose of the creation of said the Tensas Basin Levee District was for the raising, by taxation or otherwise, of a revenue to protect the lands therein from inundation by the construction and maintenance of levees, and the Governor was directed to appoint one competent person, possessed of the requisites of a qualified elector, from each of the parishes then located in said levee district, which said persons were constituted a Board of Levee Commissioners, styled "Board of Levee Commissioners of the Tensas Basin Levee District," and they were constituted and created into a body politic, with corporate powers, having the right to sue in their cor-
30 porate capacity, use a seal, and the power to do and perform every act for which the said Board of Commissioners was created; and the domicile of the corporation was fixed in the Town of Rayville, Richland Parish, Louisiana.

4.

That Act Seventy-seven (77) of 1888, in order to provide additional means to carry out the purpose for which the said levee district was created, and to enable said Board of Commissioners to build or assist in building, either within or without the State, levees and other works of public improvement designed to aid in protecting property in the said levee district from disastrous floods, did declare, in and by Section 2 thereof, "that in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable said Board to assist in developing, establishing and completing, either within or without the State, a system of levees and other works of public improvement, designed to aid in protecting property in the Tensas Basin Levee District from disastrous floods, all lands now belonging, or that may thereafter belong to the State of Louisiana, and embraced within the limits of the Tensas Basin Levee District as herein constituted, shall be, and the same hereby are, given, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas Basin Levee District, whether said lands or parts of the lands originally granted by the Congress of the United States to this State, or whether said lands have been, or may hereafter be, forfeited to, or bought in by or for, or sold to, the State at tax sales for nonpayment of taxes."

5.

That is was made the duty, in and by the said act of the Legislature, of the register of the State Land Office and of the auditor of the State, upon the request of the said Board of Levee Commissioners, or the president thereof, as provided in Section 2 of aforesaid act, "To convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands thereby granted or intended to be granted and conveyed to said Board," and that the president of said Board was required by said act to "cause said conveyances to be properly recorded," and that, "when said con-
31 veyances are so recorded, the title to said lands, with the possession thereof, shall, from thenceforth, vest absolutely in said Board of Levee Commissioners, its successors or grantees." And orator avers that, while the said Board of Levee Commissioners was granted power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such times and for such prices, as to the said Board would seem proper, it was intended that, whenever the Board of Levee Commissioners parted with said lands, it would be for an honest price and in an honest manner and for the best interests of the inhabitants of said Tensas Basin Levee District, whose representative and agent it was.

6.

Your orator avers that, under the Constitution of 1879, and the Constitution of 1898, the State of Louisiana was charged with the erection, completion and maintenance of certain levee systems, and,

in order to more effectually discharge said duty, the Legislature of said State was authorized by the said Constitutions to create and organize one or more levee districts. That, in pursuance of this constitutional direction in the matter of building and maintaining levees, and to more easily carry on this function, the said Tensas Basin Levee District was created, and the Board of Commissioners of the said levee district was likewise created, to perform and carry out these objects, and to discharge the duties prescribed by the various acts of the Legislature hereinabove referred to.

7.

That the State of Louisiana became the owner of vast areas of land in the territory embraced in the several parishes composing the Tensas Basin Levee District by Congressional grants commonly known as the "Swamp Land Grants"; that a great deal of said land, after it became the property of the State, was never entered or homesteaded, and remained the property of the State, but that a great deal of it was homesteaded and purchased by settlers subsequent to its acquisition by the State; that in the period subsequent to the war between the States, and more especially in the seventies, many
32 hundreds of thousands of acres of land were forfeited to the State of Louisiana for nonpayment of taxes under then existing laws; and, through various tax sales subsequent to the Constitution of 1879, the State became the owner of vast tracts of valuable lands, in addition to those which it still owned under the swamp-land grants aforesaid in the said arrea embraced in the said Tensas Basin Levee District.

8.

That it was the purpose of the Congressional grant, hereinabove referred to, that the swamp lands ceded to the State by the Federal Government should be used, or the proceeds thereof, for the construction and maintenance of levee and drainage systems, and your orator represents that the territory embraced in the said levee district was, during the years preceding 1893, subject to frequent inundations from the Mississippi River.

9.

That the purpose of the formation of the said levee district was to enable the State, through the Board of Commissioners thereof, to raise money, by local taxation or contribution, for the building of levees to protect the particular area embraced in said levee district, and that the said Tensas Basin Levee District and said Board of Commissioners of the Tensas Basin Levee District were so created for the purpose of acting for the best interests of the inhabitants of said district, and as their agents and representatives in all matters connected with their duties and functions under the law of their creation.

10.

That the State of Louisiana, in 1888, owned, as aforesaid, nearly nine hundred thousand (900,000) acres of valuable lands in the said Tensas Levee District, and, in order to better carry out the constitutional direction, and laws passed thereunder, with regard to the building of levees, and to furnish additional funds for that purpose, transferred the lands aforesaid to the said levee district, intending that the Board of Commissioners thereof would administer the same honestly and fairly, and sell the same for an honest price,
33 and for the best interest and advantage of the inhabitants thereof, whose representative and agent it was.

11.

That, by Act 117 of 1898, the domicile of the said levee board was moved from Rayville, Richland Parish, to Monroe, Ouachita Parish, and that, soon after the approval of said act, the said Board of Commissioners was reorganized, and the following persons became members of the said Board—that is to say:

John P. Parker, of Ouachita; J. G. Graves, of Caldwell; R. E. Yancey, of Catahoula; E. M. Hicks, of Franklin; Jno. A. Hemler, of Richland; W. A. Collins, of Morehouse, and W. C. Buchanan, of West Carroll; and that the said Board did then elect Jno. P. Parker, of Ouachita, president; Jno. F. Loveless, of Richland, secretary, and E. T. Lamkin, of Ouachita, attorney. Your orator avers, however, that, by Act No. 311 of 1908, the General Assembly of the State of Louisiana, fixed and established the domicile of said Board at Rayville, in the Parish of Richland, and that none of the aforementioned persons are members of your orator, the Board of Levee Commissioners of the Tensas Basin Levee District.

12.

That, in 1894, Jos. W. Simms, of Richland Parish, was appointed by the Levee Board aforesaid as its land agent, and, as such, immediately entered upon the discharge of his duties, and that he was authorized by the said Levee Board, in his said contract and appointment, to find a purchaser for the lands so placed under the control of the Levee Board aforesaid at a minimum price of fifty (50) cents an acre.

13.

Your orator avers that in the year 1896, although orator is unable to give the exact date of same, said Simms entered into a contract with one James W. Brown, of Brownsville, in the State of Tennessee, by which said Brown agreed to assist said Simms in finding a purchaser for said lands, in consideration of which he was to
34 receive a share or portion of the commissions which said Simms was to be paid upon the sale of said lands.

14.

That, in September, 1898, although orator does not know the exact date of same, a fraudulent and collusive scheme was entered into by and between the said Jas. W. Brown, Jos. W. Simms, land agent aforesaid; Jas. D. Lacy, a resident of Grand Rapids, Michigan; S. Wood Beal, a resident of Grand Rapids, Michigan; Thomas Hume, Ransome C. Luce, T. Stewart White, Thomas Friant, Jno. C. Rugee, Jos. J. Tucker and Anton G. Hodenpyl, who resided out of the State of Louisiana in 1898, and who still are nonresidents of said State, with certain members of the Board of Commissioners of the Tensas Basin Levee District, and certain of its officers, agents and employees, whereby all of the lands owned by and situated in said district and under the control of said district and said Board of Commissioners, should be sold and delivered for a nominal consideration and at a price far less than the real and actual value of the said property, to a company or corporation to be thereafter organized.

15.

That, in furtherance of the said collusive and fraudulent scheme, a limited-liability partnership was formed under the laws of the State of Michigan, and domiciled in the City of Grand Rapids, said State, and composed of Ransome C. Luce, Thomas Hume, T. Stewart White, Jno. C. Rugee, Thomas Friant and Anton G. Hodenpyl, S. Wood Beal and Jas. D. Lacey, and that said Jas. D. Lacey and S. Wood Beal were placed in active charge of the affairs of the said concern, which was styled, in the articles of association, "The Tensas Delta Land Company, Limited."

16.

That the agreement to form the said company was entered into upon the part of the said incorporators on or about the 21 day of October, 1898, but that the articles of association were not signed by the said parties until about the 29th day of October, 1898.

35 17.

Your orator avers that a special meeting of the aforesaid Levee Board was called to convene at Monroe, Ouachita Parish, Louisiana, on the 1st day of November, 1898, and that, previous to the meeting of the said Levee Board, the agents and representatives of the said Tensas Delta Land Company, Limited, and others interested in carrying out the aforesaid fraudulent scheme to transfer the aforesaid lands to the said land company for a nominal consideration, and for much less than the actual value of the said property, were actively engaged in interviewing the several members of the said Levee Board, and in securing promises and pledges from them to vote in favor of the proposed sale.

18.

Your orator avers further that the said Tensas Delta Land Company, Limited, was, to the knowledge of the aforesaid Board of Levee Commissioners of the Tensas Basin Levee District, willing to pay two hundred thousand dollars ($200,000) for the said lands, although they were worth, at that time, more than that amount, but that it actually purchased the same for one hundred and thirty thousand dollars ($130,000.00) through fraud, both on the part of the said Tensas Delta Land Company, Limited, and of certain of the then members of said Tensas Basin Levee Board and of certain of its officers, agents and employees, and which said fraud was not committed by said Board, but was committed against it by certain of its said members, officers, agents and employees who were able to bring about, and did bring about, the fraudulent sale of the lands herein complained of and without the knowledge of certain of the other members of said Board.

19.

That in the petition filed by your orator in the Sixth Judicial District Court of the State of Louisiana, in and for the Parish of Ouachita, in the suit brought by it against the Tensas Delta Land Company, Limited, and which has been removed to this Honorable Court, the allegation is made that said Tensas Delta Land Company, Limited, had purchased said lands from orator through fraud,
36 both on the part of said Tensas Delta Land Company, Limited, "and of said Tensas Basin Levee Board," but your orator avers that the allegations contained in said petition, that the Tensas Basin Levee Board was a party to said fraud, was made inadvertently and through error of counsel and, as a matter of fact, is not true, but that the truth is, as alleged in the foregoing paragraph No. 18 of this bill of complaint, that the fraud resulting in the sale of said lands was practiced against the said Levee Board, and not by it, but by certain of its members, officers, agents and employees.

20.

Your orator avers that the said fraud and fraudulent practices consisted principally in the fact that the sum of twenty thousand dollars ($20,000.00) in cash, and eighteen thousand, seven hundred and fifty dollars ($18,750.00) of the capital stock of the said Tensas Delta Land Company, Limited, was used by that company, by being given to certain of the members, officers and agents of said Levee Board to influence, and which did influence, a sufficient number of the said members of said Board of Commissioners of the Tensas Basin Levee District to vote in favor of said sale, which was, thereafter, made in the carrying out of the said fraud and fraudulent scheme.

21.

That, in furtherance of, and in the actual consummation of, the said fraudulent and collusive scheme, the said Board of Levee Com-

missioners adopted a resolution on November 4, 1898, accepting proposition of J. W. Brown, agent of the Tensas Delta Land Company, Limited, to buy the land of the said Levee Board for the sum of one hundred and thirty thousand dollars ($130,000), of which thirty thousand dollars would be paid in cash, and the balance in three equal annual payments, and authorized John P. Parker, the president of said Levee Board, to sign the necessary deeds for same and accordingly, seven (7) deeds, one for each of the seven parishes then composing the levee district, were actually signed on November 9, 1898, hereinafter more particularly described.

37

22.

That the lands owned by the said Levee Board in the said levee district were worth, at the time they were fraudulently and illegally conveyed to the said land company, as aforesaid, at least five hundred thousand dollars ($500,000), and, notwithstanding said fact, the said lands were illegally and fraudulently conveyed to the said land company for the sum of one hundred and thirty thousand dollars ($130,000), of which thirty thousand dollars ($30,000) was paid in cash, and the remainder in three equal payments, due in one, two and three years.

23.

That the said levee district had not been visited by any overflow since 1893, and that the said levee district was not in urgent need of funds in 1898, and that a sale of the lands, at that time, even for an adequate price, was neither urgent nor desirable; and, furthermore, that the amount received by it in cash was not sufficient to be of material benefit.

24.

Your orator avers that, by reason of the aforesaid fraudulent and corrupt dealings of certain of the said members, officers, agents and employees of the said Levee Board, acting in concert with the said Tensas Delta Land Company, Limited, the inhabitants, citizens and property owners of the Tensas Basin Levee District have been injured and damaged, and that it is the bounden duty of your orator to take appropriate action through the courts to annul the said fraudulent sales, and to recover for the inhabitants, citizens and taxpayers of the said Tensas Basin Levee District, and for your orator, who is the legal representative of said inhabitants, citizens and taxpayers, the lands so fraudulently and illegally conveyed to the said Tensas Delta Land Company, Limited, by the said Levee Board, as aforesaid.

25.

That, in the petition filed by your orator in the Sixth Ju-
38 dicial District Court of the State of Louisiana, in and for the Parish of Ouachita, in the suit brought by it against the Tensas Delta Land Company, Limited, and which has been removed

to this Honorable Court, the allegation is made that said sales of all the lands belonging to the Tensas Basin Levee District to the Tensas Delta Land Company, Limited, had been brought about "by reason of the aforesaid fraudulent and corrupt dealings of the said Levee Board and the said land company," but your orator avers that this averment was made inadvertently and through error of counsel, and that, as a matter of fact, the same is not true, but the truth is, as alleged in the foregoing paragraph No. 24 of this bill of complaint, that said sales had been brought about and consummated by reason of the aforesaid fraudulent and corrupt dealings of certain of the members, officers, agents and employees of the said Levee Board, acting in concert with the said Tensas Delta Land Company, Limited.

26.

Your orator avers that, in consummation of the said fraudulent and collusive scheme, and in the further carrying out of the fraudulent purposes of the said Tensas Delta Land Company, Limited, and of certain of the members, officers, agents and employees of the said Board of Commissioners of the Tensas Basin Levee District, and acting under and by virtue of a resolution illegally adopted on the 4th November, 1898, by said Board, by and through the frauds thus practiced by certain of the members, officers, agents and employees of the said Board of Commissioners of the Tensas Basin Levee District and against said Board and the inhabitants of the said Tensas Basin Levee District, who were and are the real parties in interest and who were, at that time, represented by said Board of Commissioners of said district, Jno. P. Parker, president of the said Levee Board, did, on the 9th day of November, A. D. 1898, before R. A. Young, clerk of the Sixth District Court, and ex-officio notary public in and for the Parish of Ouachita, State of Louisiana, sign, and execute seven (7) certain deeds or acts of sale, as follows:

One, being dated and passed as aforesaid, covering certain lands in the Parish of West Carroll, State of Louisiana, and which
39 said deed was filed for record in the office of the clerk of the Seventh District Court and ex-officio recorder in and for the Parish of West Carroll, State of Louisiana, on November 14th, 1898; and which said deed was duly recorded in Notarial Book D, page 168 et seq., and which said deed with the resolutions fraudulently adopted on November 4, A. D. 1898, as aforesaid, is, by reference and description, made a part hereof for purposes of attack, and for all other lawful purposes, and is marked "Exhibit A."

One, being dated and passed as aforesaid, covering certain lands in the parish of Richland, State of Louisiana, and which said deed was filed for record in the office of the clerk of the Seventh District Court and ex-officio recorder, in and for the Parish of Richland, State of Louisiana, on November 11, 1898, and which said deed was duly recorded in Notarial Book Q, page 49, of the Notarial Records of Richland Parish et seq.; and which said deed, with the resolutions fraudulently adopted on November 4, A. D. 1898, as aforesaid, is, by reference and description made a part hereof for purposes of

attack and for all other lawful purposes, and is marked "Exhib B."

One, being dated and passed as aforesaid, covering certain lan in the Parish of Morehouse, State of Louisiana, and which sa deed was filed for record in the office of the clerk of the Sixth Di trict Court and ex-officio recorder in and for the Parish of Mor house, State of Louisiana, on November 12, A. D. 1898, and whi said deed was duly recorded in Notarial Book V, page 86 et seq., the Notarial Records of Morehouse Parish, Louisiana, and whi said deed, with the resolutions fraudulently adopted on Novemb 4, A. D., 1898, as aforesaid, is by reference and description, made part hereof for purposes of attack and for all other lawful purpose and is marked "Exhibit C."

One, being dated and passed as aforesaid, covering certain lan in the Parish of Catahoula, State of Louisiana, and which said de was filed for record in the office of the clerk of the Eighth Distri Court and ex-officio recorder in and for the Parish of Catahoul State of Louisiana, and was duly recorded in Conveyance Book N 7, page 345 et seq., of Catahoula Parish, Louisiana, and which sai deed, with the resolutions fraudulently adopted on November 4 A D. 1898, as aforesaid, is, by reference and description, mad
40 a part hereof for purposes of attack, and for all other lawf purposes, and is marked "Exhibit D."

One, being dated and passed as aforesaid, covering certain lan in the Parish of Ouachita, State of Louisiana, and which said de was filed for record in the office of the clerk of the Sixth Distri Court and ex-officio recorder in and for the Parish of Ouachit State of Louisiana, on November 10, 1898, and which deed was du recorded in Conveyance Book No. 39, page 609 et seq., of the recor of Ouachita Parish, Louisiana, and which said deed, with the resol tions fraudulently adopted on November 4, A. D. 1898, as afor said, is, by reference and description, made a part hereof for pu poses of attack, and for all other lawful purposes, and is mark "Exhibit E."

One, being dated and passed as aforesaid, covering certain lan in the Parish of Franklin, State of Louisiana, and which said de was filed for record in the office of the clerk of the Eighth Distri Court and ex-officio recorder in and for the Parish of Frankli State of Louisiana, and was duly recorded in Notarial Book P, pa 204 et seq., of Franklin Parish, Louisiana, on the 19th of Nove ber, 1898; and which said deed, with the resolutions fraudulen adopted on November 4, 1898, as aforesaid, is, by reference and scription, made a part hereof for purposes of attack and for all oth lawful purposes, and is marked "Exhibit F."

One, being dated and passed as aforesaid, covering certain lan in the Parish of Caldwell, State of Louisiana, and which said de was filed for record in the office of the clerk of the Fifth Distr Court and ex-officio recorder in and for the Parish of Caldwell, St of Louisiana, and was duly recorded in Conveyance Book "K," pa 573 et seq., of the records of Caldwell Parish, Louisiana; and whi said deed, with the resolutions fraudulently adopted on Novem

4, 1898, as aforesaid, is, by reference and description, made a part hereof for purposes of attack and for all other lawful purposes, and is marked Exhibit "G."

27.

That, in the petition filed by your orator in the Sixth Judicial District Court of the State of Louisiana, in and for the Parish of Ouachita, in the suit brought by it against the Tensas Delta
41 Land Company, Limited, and which has been removed to this Honorable Court, the allegation is made that the sales therein alleged to have been made by said Board of Levee Commissioners of the Tensas Basin Levee District to said Delta Land Company, Limited, had been made in consummation of a fraudulent and collusive scheme to which said Board of Commissioners was a party "and in the further carrying out of the fraudulent purposes of the said Tensas Delta Land Company, Limited, and the said Board of Commissioners," but your orator avers that said allegations were made inadvertently and through error of counsel, and as a matter of fact are not true, but the truth is, as alleged in the foregoing paragraph No. 26, said sales were made in the consummation of a fraudulent and collusive scheme and in the carrying out of the fraudulent purposes of the Tensas Delta Land Company, Limited, and certain of the members, officers, agents and employees of the said Board of Commissioners of the Tensas Basin Levee District, to which said Board of Commissioners was, itself, not a party.

28.

Orator avers that there was attempted to be transferred, by the said seven deeds, approximately eight hundred and eighty-five thousand and forty and 31/100 (885,040.31) acres of land, for a price and sum amounting to one hundred and thirty thousand dollars ($130,000.00) of which thirty thousand dollars ($30,000.00) was paid in cash, and the remainder in three equal payments, with six (6) per cent. per annum interest from date until paid, and orator avers, further, that the lands described in the said seven deeds, aggregating the acreage as stated, for the price and sum as hereinbefore set out, yielded an average price to the said Board of Commissioners of about fourteen and one-half *cents* (14½) cents per acre, and that the Levee Board aforesaid received for same about fourteen and one-half cents an acre, or the sum of one hundred and thirty thousand dollars ($130,000.00).

29.

Your orator avers, further, that the said Tensas Delta Land Company, Limited, has, since its said fraudulent and illegal ac-
42 quisition of the lands described and set forth in the said acts of sale as aforesaid sold to various and divers persons, firms and corporations a number of tracts of the said lands so fraudulently and illegally transferred to it by the said Board of Commissioners of the Tensas Basin Levee District and in the several par-

ishes of said district, as will be seen by the various acts of transfer of said lands to said purchasers, as well as by descriptive and certified lists of said lands, with the prices at which the same were sold, marked Exhibits H, I, J, K, L, M, N and O, hereto annexed for reference and as part hereof, and that the said sales from the Tensas Delta Land Company, Limited, to the various purchasers from it, as aforesaid, show that said company received for the lands so sold by it to the said purchasers, the sum of four hundred and eighty thousand and eight hundred and fifty-four and 50/100 dollars ($480,854.50), as is further shown by Exhibit P, hereto annexed for reference.

30.

Orator avers, however, that it has good reason to believe and does believe, and so avers, that, although the said acts of sale show that the amount received by the said Tensas Delta Land Company, Limited, as the purchase price for the lands described therein, was the sum of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars ($480,854.50), nevertheless said company did, as a matter of fact, and as orator will show on the trial of this case, receive a much larger amount from the sales of such lands, which further additional amount orator reserves the right to show on the trial of this case, as well as to recover the same, in addition to the aforesaid amount of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars.

31.

Now, your orator avers that, without in any manner ratifying the sales of said lands thus made by the said Tensas Delta Land Company, Limited, to the various purchasers from it, asaforesaid, but on the contrary, reiterating the allegations heretofore made in respect to the fraudulent and collusive practices and acts of said company and others in getting possession of said lands, orator is
43 entitled to recover from said Tensas Delta Land Company, Limited, the aforesaid amount of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars ($480,854.50), together with such additional amount as may be shown on the trial of this case to have been received as aforesaid by said company, less the sum of one hundred and thirty thousand dollars ($130,000) received by the predecessors of your orator, as the price received by them, as aforesaid, for the entire body of lands fraudulently and illegally sold to said Tensas Delta Land Company, Limited, and that your orator is entitled to have the said illegal and fraudulent sales made by the said Board of Commissioners of the Tensas Basin Levee District to said Tensas Delta Land Company, Limited, as aforesaid, on the 9th — November, 1898, set aside and annulled as to the balance of the lands so fraudulently and illegally transferred to said company, and which have not been disposed of by it, and which orator understands and believes, and so avers, amount to about four hundred and thirty-two thousand, one hundred and nine 95/100 (432.109.95) acres, as will be fully shown by Exhibit P,

already heretofore referred to as being annexed hereto as part hereof, as well as by Exhibits Q, R, S, T, U, V, W and X, hereto annexed for reference and greater certainty of description.

32.

Your orator avers further, that the lands which it owned in the aforesaid parishes composing the Tensas Basin Levee District, and so illegally and fraudulently conveyed to the Tensas Delta Land Company, Limited, as aforesaid, were, at the time they were so fraudulently disposed of, worth at least fifty cents (50c) per acre, and that the lands still remaining unsold by said Tensas Delta Land Company, Limited, and which were so fraudulently and illegally conveyed to it by the said Tensas Basin Levee District, are worth fully four dollars ($4.00) per acre, or the sum of one million, seven hundred and twenty-eight thousand, four hundred and thirty-nine and 80/100 dollars ($1,728,439.80).

33.

That, in the petition filed by your orator in the Sixth Judi-
44 cial District Court of the State of Louisiana, in and for the Parish of Ouachita, in the suit brought by it against the Tensas Delta Land Company, Limited, and which has been removed to this Honorable Court, it is alleged that the lands "so illegally and fraudulently conveyed to the Tensas Delta Land Company, Limited, as aforesaid, were, at the time they were so fraudulently disposed of, worth more than one dollar per acre, and that the lands, still remaining unsold by said Tensas Delta Land Company, Limited, and which were so fraudulently and illegally conveyed to it by the Tensas Basin Levee Board, the predecessors of your petitioner, as aforesaid, are worth fully ten dollars per acre, or the sum of four million, three hundred and twenty-one thousand and ninety-nine 50/100 dollars ($4,321,099.50.") Now, your orator avers that the aforesaid allegations as to the value of the land so sold, and as to those lands remaining unsold, were made inadvertently and through error of counsel, and the truth is that their true value, both at the time of the sale of the same by the Board of Levee Commissioners of the Tensas Basin Levee District to the Tensas Delta Land Company, Limited, and at the present time, in respect to those lands remaining unsold by said Tensas Delta Land Company, Limited, is fully set out in detail in paragraph 32 of this bill of complaint.

34.

Now, your orator avers, in the alternative, that, aside from the fact that the aforesaid conveyances to the Tensas Delta Land Company, Limited, from the Tensas Basin Levee District, were conceived in, and consummated through and by fraud and fraudulent, corrupt and illegal practices, as aforesaid, the same would be, and were, a mere disguised donation made by the Commissioners of the said levee district to said Tensas Delta Land Company, Limited, as

the lands attempted to be disposed of were worth not less than fifty cents (50c) per acre at the time, although sought to be disposed of for fourteen and one-half (14-1/2c) per acre.

35.

That, in the petition filed by your orator in the Sixth Judicial
District Court of the State of Louisiana, in and for the Par-
45 ish of Ouachita, in the suit brought by it against the Tensas
Delta Land Company, Limited, and which has been removed to this Honorable Court, the allegation is made that "the lands attempted to be disposed of were worth not less than one dollar per acre at the time." Now your orator avers that this allegation was made inadvertently and through error of counsel, and the truth is that said lands were worth not less than fifty cents (50c) per acre at the time the sales were made by said Board of Commissioners of the Tensas Basin Levee District to the Tensas Delta Land Company, Limited, herein complained of.

36.

Your orator avers, further, that, if this Honorable Court should hold that said conveyances of said lands in said parishes should not be set aside for cause, and by reason of the aforesaid fraud, and fraudulent, corrupt and illegal practices, and should further hold that the same were not really and in fact a disguised donation of the lands described therein by said Board of Commissioners to said Tensas Delta Land Company, Limited, but were really intended as sales to the said land company, then, and in that event, and in the alternative, orator avers that the said acts of sale are now, and were at the time, and have always been, absolutely null and void for lesion beyond moiety, as the amounts stated in said acts of sale as the purchase price paid for said property by said Tensas Delta Land Company, Limited, were, at the time, and are now, far below one-half of the real and just value of said property.

Orator avers, further that the said Tensas Delta Land Company, Limited, is a limited liability partnership created under the laws of the State of Michigan, and that *is* [its] domicile is in the City of Grand Rapids, in said State, but that it has an agent in the Parish of Ouachita, State of Louisiana, in the person of Fred G. Hudson, who resides in said parish and State, upon whom process may be served, and that it is suable in said Parish of Ouachita, State aforesaid, through process served upon its said agent.

37.

Your orator avers further that the Board of Levee Com-
46 missioners of the Tensas Basin Levee District who were the
immediate predecessors of your orator and who, themselves, did not compose and constitute the membership of the Board of Commissioners of said levee district at the time the aforesaid fraudulent sales, complained of herein and in the petition filed in this cause in the Honorable the Sixth Judicital District Court of the State of

Louisiana and Parish of Ouachita, were made, was informed, for the first time, on the 13th October, 1909, or thereabouts, of the fraud that had been practiced by said Tensas Delta Land Company, Limited, and by certain of the members, officers, agents and employees of the Board of Commissioners of the Tensas Basin Levee District against that levee district in bringing about the said illegal and fraudulent sales made as aforesaid by said Board of Commissioners of said levee district to said Tensas Delta Land Company, Limited, of all the lands lying in said district, but that when said Board of Levee Commissioners, the immediate predecessors of your orator, was so informed, it was advised that the State of Louisiana, acting upon the opinion and advice of her attorney general, Walter Guion, claimed the sole right to institute a suit for the setting aside of said sales on account of the fraud which had been practiced and for the recovery of the lands so illegally and fraudulently sold and for that reason, and because of the institution by the State of Louisiana, through her said attorney general, of the suit hereinafter referred to, your orator did not institute suit for the purpose of annulling and setting aside said sales.

38.

That soon thereafter, to-wit, on the sixth (6) day of November, 1909, a suit was instituted by the State of Louisiana against the Tensas Delta Land Company, Limited, defendant herein, in the Seventh (7th) Judicial District Court for the State of Louisiana and Parish of Richland, for the purpose of annulling and setting aside the sale of all such lands alleged to have been thus illegally and fraudulently sold which were situated in that parish, and in the petition filed in that suit by the State of Louisiana, through her attorney general, the same allegations, substantially, were made in respect to the said fraud as are made in the petition filed by your orator in the said suit brought by it in the Sixth Judicial District Court of the State of Louisiana and Parish of Ouachita and in this bill of complaint.

39

That, instead of joining issue with the State of Louisiana, plaintiff in that suit, upon the question of the illegal and fraudulent character of said sales as alleged in the petition filed in that suit, the Tensas Delta Land Company, Limited, defendant herein, resisted the right of the State of Louisiana to bring the suit which it had thus instituted, and refused to join issue with the State of Louisiana upon the question of the legality and good faith of said sales, claiming, as it did, that the State of Louisiana was without right to bring that suit, even for the use and benefit of the Board of Commissioners of the Tensas Basin Levee District, and that the same could only be brought by that Board itself, and that said Tensas Delta Land Company, Limited, did furthermore file other pleadings in that suit pending to delay the trial of the question of the fraudulent character of said sales which had been raised therein.

40.

Your orator avers further that said suit, filed as aforesaid in the Seventh Judicial District Court for the State of Louisiana and Parish of Richland, went to the Supreme Court of the State of Louisiana on appeal from a judgment rendered by the Judge of the 7th Judicial District Court for the Parish of Richland and the Supreme Court of the State of Louisiana, by a judgment rendered and handed down on the 28th March, 1910, and which became final on the 25th April, 1910, by its refusal to grant a rehearing, decreed that the State of Louisiana was without right to bring the suit which it had instituted in the Parish of Richland, or any other suit of like character, and that no such suit could be brought, except by the Board of Commissioners of the Tensas Basin Levee District, and that your orator, which is composed of members who were appointed by the Governor of the State of Louisiana not long previous to the 5th of March, 1910, the day on which orator organized by the appointment of a president and secretary and none of whom had ever previously been members of said Board has, in compliance with the law as laid down by the Supreme Court of the State of Louisiana
48 in the opinion and judgment rendered by it as aforesaid, brought this suit as it understands it is its duty to do.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the defendant may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, all and singular the matters stated and charged in the petition filed by your orator in the District Court for the State of Louisiana and Parish of Ouachita, as amended by this bill of complaint, as well as those hereinbefore stated and charged in this, your orator's bill of complaint and amended bill of complaint, and now prays the Court that defendant be required to produce said alleged deeds, and that it may be adjudged and decreed that complainant, the Board of Levee Commissioners of the Tensas Basin Levee District, never executed the alleged deeds, and that the same may be decreed to be false and fraudulent and ordered to be delivered up to be cancelled and annulled according to the practice of a court of equity in like cases.

That said deeds to said land described in the said petition and in this bill of complaint, all dated November 9th, 1898, be set aside, annulled and held for naught and that defendant be required to surrender up the same to be cancelled, and that defendant be forever enjoined from setting up or claiming any estate, right, title or interest, in or to the premises described in said deeds, and that complainant be decreed to be the owner of all of said lands so fraudulently and illegally attempted to be conveyed by said deeds to the said Tensas Delta Land Company, Limited, and entitled to the possession of the same, except such of the premises and lands disposed of by defendant to third persons, as set forth in the petition filed in the Honorable Sixth Judicial District Court for the State of Louisiana and Parish of Ouachita and in this bill of complaint and

which are fully and particularly described in the various exhibits annexed hereto as part hereof.

Your orator prays further that it do have and recover judgment against defendant, the Tensas Delta Land Company, Limited, for the sum of four hundred and eighty thousand, eight hundred and fifty-four 50/100 dollars ($480,854.50), being the price of the lands sold by it as shown by the various deeds and acts of sale as
49 aforesaid from, and which formed a part of, the lands fraudulently and illegally attempted to be acquired by it from the Board of Commissioners of the Tensas Basin Levee District on the 9th November, 1898, together with five (5) per cent per annum interest on the various sums aggregating that amount coming into the possession of the said Tensas Delta Land Company, Limited, as the proceeds of said sales, from the time that said Tensas Delta Land Company, Limited, sold such lands until the final payment of same to your orator, together with such further and additional amount as may be shown on the trial of this case to have been so received as aforesaid by defendant over and above the purchase price expressed in said deeds, less, however, the sum of one hundred and thirty thousand dollars ($130,000.00), the amount paid by defendant at the time of the execution of said deeds of sale, on the 9th November, 1898, together with like interest thereon from that date.

Your orator prays further, in the alternative, that in the event this Honorable Court should hold that said deeds, by which the sale and transfer of said lands were made, were not conceived in, and consummated through and by means of, fraud and fraudulent, illegal and corrupt practices, as hereinbefore alleged, than [then] and in that event, orator prays that the aforesaid deeds of the 9th November, 1898, be declared and adjudged not to be sales of said lands by the said Board of Commissioners aforesaid to said Tensas Delta Land Company, Limited, but that they be held and adjudged to be a disguised donation of said lands to said Tensas Delta Land Company, Limited, and that, for that reason, judgment be entered up setting aside and annulling the same.

Your orator prays further, in the alternative, that, in the event this Honorable Court should hold that said deeds were not conceived in, and consummated through and by means of, fraud and fraudulent, illegal and corrupt practices, as aforesaid, and in the further alternative that it should hold that said acts of sale or deeds of November 9th, 1898, were not a donation in disguise, as heretofore alleged, but that they were, in reality, conveyances to said Tensas Delta Land Company, Limited, of the lands described therein, then, your orator prays that the said conveyances and transfers sought to be made in and by the same be, nevertheless, set aside and annulled for lesion, for the reasons already more fully and specifically hereinbefore set forth.

50 Your orator prays further that your orator may have such further and other relief in the premises as the nature and the circumstances of the case may require.

And may it please your Honors to grant to your orator a writ of subpœna to be directed to the said Tensas Delta Land Company,

Limited, thereby commanding it at a certain time, and under a certain penalty therein to be limited, personally to appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made by it in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

WALTER GUION,
Att'y Gen'l;
R. G. PLEASANT,
Assistant Att'y Gen'l;
M. C. THOMPSON,
Attorney for Board of Commissioners,
Tensas Basin Levee District,
Solicitors for Complainant.

Affidavit.

On this 1st day of November, 1911, before me, personally appeared T. B. Gilbert, Jr., president of the Board of Levee Commissioners of the Tensas Basin Levee District, the above named complainant, who made solemn oath that he has read the foregoing bill of complaint and amended bill of complaint and knows the contents thereof, and the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to these matters he believes them to be true.

T. B. GILBERT, JR.

Sworn to this 1 day of November, 1911.

[SEAL.] H. J. CARTER,
Clerk U. S. Circuit Court, Eastern District of La.

Indorsed: No. 694. In the Honorable the United States Circuit Court for the Fifth Circuit and Western District of Louisiana. In Equity. Board of Levee Commissioners of the Tensas Basin
51 Levee District vs. Tensas Delta Land Company, Limited. Bill of Complaint and Amended Bill of Complaint. Filed Nov. 2, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana. Noted in Chancery Order Book, Vol. 2, folio 458.

Waiver of Service.

Service acknowledged. All rights to demur and object to the amended bill, or allowance thereof, as well as all other rights, reserved.

Nov. 6/11.

HUDSON, POTTS & BERNSTEIN.

Filed Nov. 7, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

United States Circuit Court, Western District of Louisiana, at Monroe.

No. 694.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

Now come the defendants herein, through their undersigned solicitors, Farrar, Jonas, Goldsborough & Goldberg, and enter their appearance to the bill of complaint herein filed by the complainant under the order of this Court.

FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG, *Sol'rs Def'ts.*

Indorsed: No. 694. U. S. Circuit Court, Western Dist. of La., at Monroe. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd. Appearance. Filed Dec. 4, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, folio 460.

52 United States Circuit Court, Western Dist. of La., at Monroe.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS
vs.
TENSAS DELTA LAND COMPANY, LTD.

To the Honorable the Judges of said Court:

Now come the defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained, to be true in such matter and form, as the same are therein set forth and alleged, do demur to the said bill, and for causes of demurrer, general and special, show:

1st. That the said complainant has not by its said bill made such a case as entitles it in a court of equity to any recovery or relief as therein set forth.

2nd. That the averments of conspiracy and fraud in said bill are so vague, general, incomplete and indefinite that these defendants cannot be put upon their defense by any such vague and indefinite averments, and particularly is this true of paragraphs 14, 15, 16, 17, 18, 19 and 20 of said bill.

3rd. That the said bill is without equity because the complainant does not offer to do equity by offering to return the purchase price of the lands sold with interest, the taxes paid on the whole of said

lands with interest, the necessary costs expended in preserving th
said lands with interest, and the necessary costs of making sales
said lands with interest.

4th. That the said bill is without equity because the complainan
sues to recover the gross amount of the sale price of certain lan
with interest, and at the same time refuses to confirm and ratif
said sales.

5. That the demand of the complainant to set aside said sale f
lesion beyond moiety is barred on the face of the bill by the pr
scription of four years, which prescription defendants plead in b
of such right and claim.

6th. That the demand of the complainant to set aside sai
53 sale for fraud or on any other grounds is barred on the fa
of the bill by the prescription of ten years, which prescri
tion these defendants plead in bar of such right and claims.

7th. That the averments of said bill, whereby the complainan
attempts to avoid the operation of the prescription of ten years a
crued on the face of the bill, are utterly insufficient in law or i
equity to prevent the operation of said limitation, such averment
being the bare allegations that the complainant "was informed, f
the first time, on the 13th of October, 1909, or thereabouts, of th
fraud that had been practiced."

8th. That the demand of the complainant to set aside for frau
is barred on the face of the bill by the prescription of one year, b
cause it appears by the averments of the bill that the knowledge
said alleged fraud came to the complainant more than one year pri
to the time when this suit was brought, which prescription of on
year these defendants plead in bar of such right and claim.

9th. That the averments of said bill whereby complainant a
tempts to avoid the operation of the prescription of one year ar
utterly insufficient in law or in equity to prevent the operation
the said limitation.

Wherefore, for these and divers other grounds of demurrer ap
parent on the face of said bill, defendants do jointly and severall
demur to complainant's bill, and pray that each and all of the d
murrers above set forth be sustained and the complainant's bill b
dismissed and the complainant's demands rejected with costs, an
demurrants will ever pray.

FARRAR, JONAS, GOLDSBOROUGH &
GOLDBERG, *Sol'rs.*
EDGAR H. FARRAR,
HENRY BERNSTEIN,
Counsel.

F. G. Hudson, being duly sworn, deposes and says that he is th
legal agent of the Tensas Delta Land Co., Ltd., in the State
Louisiana; that all of the defendants, who compose the limited par
nership acting under such name, are absent from this circuit, an
that all of the officers of said limited partnership are lik
54 wise absent from this circuit; that he has read the foregoi
demurrer and knows the contents thereof and that same
not interposed for delay.

F. G. HUDSON.

Sworn to and subscribed before me this 14th day of Dec., 1911.
[SEAL.]
W. A. MYATT,
Clerk D. C., 6th Dist. of La.

The undersigned counsel of the defendants do hereby certify that in their opinion the foregoing demurrers are good in point of law.
EDGAR H. FARRAR,
HENRY BERNSTEIN,
Counsel.

Indorsed: No. 694. In Equity. U. S. Circuit Court, West. Dist. of La., at Monroe. Board of Levee Commissioners of The Tensas Basin Levee District versus Tensas Delta Land Co., Ltd. Demurrer. Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana. Noted in Chancery Order Book, Vol. 2, folio —.

U. S. Circuit Court for the Western District of Louisiana, at Monroe.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

Now come James D. Lacey, S. Wood Beal, Thomas Hume, Thomas Friant, Joseph J. Tucker, T. Stewart White, James B. Wylie, Charlotte C. Luce, Morton H. Luce, John C. Ruge, Anton G. Hodenpyl, George H. Garvey, Gregory M. Luce and Victor Thrane, who now compose the limited partnership known as the Tensas Delta Land Co., Ltd., made defendant in this case, and file this answer to complainant's bill of complaint, in support of their demurrers herein and herewith filed.

These defendants now and at all times saving and reserv-
55 ing unto themselves all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, and specially reserving the benefit of the demurrers general and special herein and herewith filed, and filing this answer only in support of said demurrers, as required by the rules of equity practice, for answer to said bill, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

1. That the matters contained in the first, second, third, fourth, fifth and sixth paragraphs of said bill are mere averments of what appears on the face of the various statutes and laws therein set out and referred to, and these defendants refer at all times to said laws and statutes to show what they provide and what they mean, not accepting the complainant's interpretation of said laws and statutes.

2. That the matters and things set forth in the 7th paragraph of the bill are partially true only, the truth being: (1) That there were certain grants of land made to the State of Louisiana in the territory aforesaid by the Congress of the United States, being swamp and overflowed lands, the extent of which grants these defendants do not know; (2) that the very large majority of said lands were sold and disposed of by the State; (3) that owing to the destruction and non-maintenance of the levees in said territory from 1860 to 1880 large portions of lands so acquired by private persons were abandoned by the owners who refused to pay taxes on the same; (4) that the State attempted to forfeit said abandoned lands for taxes, but that the assessments of a very large portion of the lands were absolutely void, and the acts and doings of the State conveyed no title to the State under said pretended tax proceedings.

3. That the matters and things stated in the 8th paragraph of said bill are a mere inference of the pleader as to what the object and purpose of the State was in creating the Tensas Basin Levee District, such object and purpose being deducible from the acts creating said Board, to which acts these defendants at all times refer.

56 4. That the matters and things set forth in the 10th paragraph of said bill (there being no 9th paragraph) are generally true, except that it is not true that the lands owned by the State and transferred to the said Levee Board amounted to 900,000 acres.

5. That the matters and things set forth in the 11th paragraph of said bill are true.

6. That the matters and things set forth in the 12th paragraph of said bill are true, and it is also true that the said Board agreed to pay said Simms a commission of 2 cents an acre upon all lands which he might sell at 50 cents an acre or above, authorizing him to sell all of said lands at 50 cents an acre.

7. That as to the matters and things averred in paragraph 13 of said bill these respondents have no knowledge, information or belief of the acts and doings of said Simms and said J. W. Brown in the year 1896, and therefore can neither affirm nor deny the averments of the 13th paragraph of said bill.

8th. That the matters and things set forth in the 14th paragraph of said bill are absolutely false and untrue; that it is not true that in September, 1898, or at any other time, there was any fraudulent and collusive scheme, or any agreement, contract or understanding of any kind between any of the defendants with J. W. Brown, or with Jos. W. Simms, or with any members of the Board of Commissioners of the Tensas Basin Levee District, or with certain of its officers, agents and employees whereby all of the lands owned and situated in said district and under the control of said district and said Board of Commissioners should be sold and delivered for a nominal consideration, and at a price far less than the real and actual value of the said property, to a corporation to be thereafter organized. That none of the defendants ever at any time had any understanding or agreement or contract, express or implied, with

Jos. E. Simms, or with any member, or officer, or agent, or servant of the Tensas Basin Levee District in respect to the sale or disposition of the lands of said Board; that the true facts in relation
57 to the said matters are as follows: On or about Aug. 10th, 1898, the said Levee Board held a meeting and gave out publicly that they were going to sell the lands of the Board, which Simms had been trying in va[illegible] sell for 4 years at 50 cents an acre; that at that meeting th[illegible]ed a resolution allowing Simms a commission of 2 cents an[illegible] all lands he could sell by September 27th, which defenda[illegible]arge was a notice to Simms that his agency would stop that date, and the Board adjourned to September 27, to receive offers for the lands in question, which meeting, on account of fear of yellow fever, was not held until November 1st; that in the early part of September, J. W. Brown, through one J. N. Haggins, brought the question of buying of these lands to the attention of J. D. Lacey in Chicago and asked J. D. Lacey to join him in the purchase of these lands and to furnish the money to make the purchase; that J. D. Lacey thereafter approached Ransom C. Luce (now dead), Thomas Hume, T. Stewart White, John C. Ruge, Thomas Friant, and Anton G. Hodenpyle, and solicited them to put up the money to buy the lands, upon the agreement that his firm of J. D. Lacey & Co. (then composed of J. D. Lacey and S. Wood Beal) and J. W. Brown, who was a large dealer in lands, would undertake to buy said lands and would undertake to sell said lands at their own expense in certain respects, and after paying back all the money advanced by the subscribers and all other expenses and taxes, with interest at six per cent per annum, the profits of the sale of the lands was to be equally divided between the shareholders and the said J. D. Lacey & Co. and the said J. W. Brown, and that a company should be formed, to the stock of which the parties above named should subscribe all the stock, and that the said Lacey and his partner, Beal, should subscribe only one share of stock each in order to qualify them to act as officers of the company so as to carry out the agreement to sell said lands; that the said named parties accepted this proposition, which was afterwards modified by an agreement that $20,000 should be paid to J. W. Brown for services, lawyers' fees and expenses for purchasing said lands; that in accordance with this agreement the parties aforesaid, on October 29th, 1898, formed a limited liability partnership association under the laws of the State of Michigan, styled the Tensas Delta Land
58 Company, Limited, to the capital stock of which fixed at $150,000 the parties subscribed as follows:

Ransom C. Luce	$45,000
Thomas Hume	36,000
T. Stewart White	39,800
John C. Ruge	10,000
Thomas Friant	10,000
Anton G. Hodenpyl	9,000
Jas. D. Lacey	100
S. Wood Beal	100
Total	**$150,000**

That James D. Lacey was elected chairman of said partnershi association and S. Wood Beal secretary, and at a meeting of th shareholders held October 29, the chairman and secretary were au thorized to buy at the best obtainable price and on the best obtain able terms the lands of the Tensas Basin Levee District, and t execute all necessary papers and obligations in the name of th company; that on Tuesday, Nov. 1, 1898, the Tensas Basin Leve Board met to receive propositions for the purchase of its lands an after receiving a report from J. W. Simms that he had found purchaser for the lands (meaning it is believed a proposition fron J. W. Brown to buy said lands for $130,000) passed a resolution discharging Simms; that the said J. W. Brown, through his counsel F. G. Hudson, thereafter presented his proposition to buy said lands for $130,000; that the Board then adjourned until Wednesday the 2nd, without action on Brown's offer; that on Wednesday morn ing, Nov. 2, the Board met, and after transacting routine business adjourned to 7 o'clock in the evening to receive further propositions that might be made for its lands; that at said evening meeting of Nov. 2, Mr. J. S. Boatner, now one of the District Judges of the State, then stated to the Board that if time was given him until the January meeting, he could find a purchaser at a better price than that offered by Brown and that he once had a purchaser for such lands, but that he was dead; that Mr. Ivey I. Davis then stated to the Board that if he was given until Thursday, Nov. 3, he could produce a purchaser at a better price then Brown's and that if he failed by that time to make good, he would ask for no further
59 delay whereupon the Board adjourned until Thursday, Nov. 3; that on Thursday, Nov. 3, Mr. Davis appeared and was unable to make good his promise to produce a purchaser actual or prospective for said lands, that thereupon the Board adopted a reso lution selling the lands of the Board without warranty to Mr. J. W. Brown, agent, or his assigns, for $130,000, payable $30,000 in cash and the balance in three annual installments of $33,333.33, with six per cent per annum interest from date until paid, and authorizing the president of the Board, J. P. Parker, to execute the deeds; that on Nov. 9, 1898, the said president, at the request of said Brown executed deeds to the lands therein described to the Tensas Delta Land Co., Ltd., and received from said company $30,000.00 in cash and three notes of said company for $33,333.33 each, due respectively one, two and three years after date, with six per cent per annum interest from date until paid, all of which notes with the interest due thereon were duly paid by said company; that the said contract having been consummated the Tensas Delta Land Co., Ltd., paid the said J. W. Brown the $20,000 agreed upon for his services and expenses; that thereafter the said company and its subscribers and the said J. D. Lacey & Co. and the said Brown entered into 2 certain written contracts, copies of which are hereto annexed and made part of this answer, carrying out the previous agreement between Lacey & Brown and the subscribers to the stock aforesaid, which contracts were dated Nov. 10th, 1898, but were not signed until sometime in January, 1899; that in accordance with said

contracts 750 shares, or one-half of the capital stock of said company, was placed in escrow with the Michigan Trust Company, one-half of which was to be delivered to J. D. Lacey & Co., and one-half thereof to J. W. Brown, on the fulfillment of the conditions of the contract, and that said conditions being thereafter fulfilled the said stock was delivered to said J. D. Lacey & Co., and to the assigns of J. W. Brown. Defendants annex to this answer copies of the minutes of said Levee Board of date Aug. 10th, and Nov. 1, 2 and 3rd, 1898.

9. That the matters and things set forth in the 15th paragraph of said bill are partly false and partly true; that it is true that a limited liability partnership association was formed between the parties therein named, under the laws of Michigan, called
60 the Tensas Delta Land Co., Ltd., and that J. D. Lacey and S. Wood Beal were placed in active charge of the affairs of said concern, but it is not true that said limited liability partnership association was formed in furtherance of any collusive and fraudulent scheme, but only under the circumstances and facts above averred.

10. That it is true, as averred, in the 16th paragraph of said bill, that said articles of association were signed on October 29, 1898, but it is not true that the agreement to form said company was made on Oct. 21st, 1898, but prior to that time in the month of September.

11. That all the allegations contained in the 17 paragraph of said bill are false and untrue, except that a meeting of the Tensas Basin Levee Board was called to meet Nov. 1, 1898, and in this connection defendants aver that none of the defendants and no person representing them, prior to the meeting of Nov. 1st, or thereafter, had any conversation with any of the members of said Levee Board or any conversation with any of said members, in regard to the acceptance of the bid of the said Brown; that these defendants have no knowledge of the acts and doings of said Brown; but are informed that he may have discussed the matter of his bid with the members of said Board, but they deny that said Brown did any wrongful act or made any wrongful suggestion to any of said members or that he was guilty of any impropriety in discussing his proposed bid with the members of said Board and finding out from them what their views upon said bid were, or that he ever had any authority to do any wrongful acts, or made any wrongful suggestions from these defendants or any of them.

12. That the matters and things set forth in the 18th paragraph of said bill are false and untrue; that these defendants never expressed any willingness to pay $200,000.00 for the said lands and that no member of said Levee Board *or* ever was informed of any such willingness; that said lands at that time did not have a market value of $200,000.00, but were worth only the $130,000.00, which was paid for them, and that defendants purchased said lands under their contract with Lacey & Brown in good faith and honestly and without any fraud on their part or on the part of any
61 member of said Levee Board, or of any of its officers, agents or employees.

13. That there is nothing in the 19th paragraph of said bi which requires any answer from these defendants, except to den that the said Levee Board, or any of its officers, members or em ployees were guilty of any fraud or wrongdoing in regard to th sale of said lands.

14. That the matters and things set forth in the 20th paragrap of said bill are absolutely false and untrue; that it is not true tha the sum of twenty thousand dollars in cash and eighteen thousan seven hundred and fifty dollars of the capital stock of the defendan company or any other sum whatever, was used by these defendant or any of them, by being given to certain of the members, officer and agents of the Levee Board to influence, and which did influenc a sufficient number of said members of said Board to vote in favo of said sale; that this defendant partnership association has neve paid out any sum of $20,000, except the $20,000 paid to J. W Brown, aforesaid, on Nov. 9th, 1898, and these defendants deny tha said Brown ever paid a single dollar of said $20,000.00 to any office or member or agent of said Levee Board, directly or indirectly, eithe to influence or to corrupt them in respect to said sale; that this com pany has never issued any of its stock to any person, except to it subscribers, and the 375 shares to J. D. Lacey & Co., and the 37 shares to the assignees of J. W. Brown under the contracts herein above set forth, and defendants deny that any of its stock, directl or indirectly ever went to any officer, member or agent of the Tensa Basin Levee District, or was ever used to influence or to corrupt an of said officers, members and agents or to influence them to make th said sale.

15. That the matters and things averred in the 21st paragrap of said bill are partly true and partly untrue—that it is true defend ants purchased said lands for the sum of $130,000.00 on the term named, but that it is untrue that said lands were illegally an fraudulently purchased; that it is untrue that the lands owned b the Levee Board were worth at the time they were conveyed t defendants at least $500,000.00, but it is true that the lands pur chased by these defendants were, under the circumstance
62 worth only what defendants paid for them, i. e., about 22 cents per acre.

16. That defendants have no knowledge as to the matters an things averred in the 23rd paragraph of said bill, but are informe and believe and therefore charge that the same are untrue, and the aver that the levee system of the Board was incomplete and insuff cient, and that the Board had been trying for years to sell thes lands at 50 cents an acre and could find no purchasers; that th policy of the Board from its very origin had been to sell and dispos of these lands in order to get them upon the tax rolls and ha once disposed of the same for a vile price and that the previou transfer of the lands being set aside the Board had determined t sell these lands at the best available price before these defendant had ever conceived the idea of buying them; and that another reason which induced the Board to sell said lands, was that, being public lands, the public thought they belonged to them and consequently

they were being depredated upon and the timber cut off of them to such an extent and by so many people that the Board found it impractical to protect them.

17. That the matters and things set forth in the 24th paragraph of said bill do not contain any averments which these defendants are required to answer, except to deny that there was ever any fraudulent and corrupt dealings of certain of the members, officers, agents and employees of the Levee Board acting in concert with these defendants and that any injury had ever accrued to the complainant, or the inhabitants within its territory, by any act or doing of the defendants.

18. That the matters and things set forth in the 25th paragraph of said bill are matters which these defendants are not required to answer, being an attempt on the part of the complainant to correct the allegations made by it in the pleadings filed in the State court.

19. That the matters and things set forth in paragraph 26 of said bill are false and untrue, except that it is true that on Nov. 3rd, 1898, the Tensas Basin Levee Board, by proper resolution, accepted the offer made on Nov. 1st, 1898, by J. W. Brown, styling himself as agent, and authorized John P. Parker, president
63 of said Board, to sell the lands of the said Board to said Brown or his assigns, without warranty, for $130,000, payable on the terms named, and that the said John P. Parker in execution of said resolution, did on Nov. 9th, 1898, by act before R. A. Young, ex-officio notary, execute the seven deeds set up in the bill to the Tensas Delta Land Company, Ltd., said deeds being made to said company at the request of said Brown, in accordance with the agreement between the organizers of said company and said J. D. Lacey and J. W. Brown, said deeds being made and accepted in good faith and without any wrong or collusion or corruption on the part of these defendants, or on the part of the officers, members, agents or employees of said Levee Board.

20. That the matters and things set forth in the 27th paragraph of said bill are matters which these defendants are not required to answer, being an attempt on the part of the complainant to correct the allegations made by it on the pleadings filed in the State court.

21. That the matters and things set forth in the 28th paragraph of said bill are untrue, the truth being as follows: At the time said deeds were made the condition of the titles to the land claimed by the Levee Board were known to be so uncertain and chaotic, that it would have taken an indefinite period of time to make an examination and abstract of the titles to determine what and how much land the Board owned and was capable of conveying, and therefore the said seven deeds were mere copies of the auditor's deeds originally made to said Board by the State of Louisiana, it being the intention of the parties that the purchasers should afterwards examine into and abstract the titles to said lands and give quit claim deeds to the large number of persons the sales of which property were void and to the persons to whom the Levee Board had already sold lands, and to whom the Levee Board had issued quit claim deeds and whom the Levee Board had permitted to redeem

their lands sold by the State at tax sale; that inasmuch as the lands were sold without warranty and for a lump sum, it made no difference to either party whether lands already sold or held by void title, or quit claimed or sold by the Board were included in the deed or not, and in order to cover omissions and mistakes there was
64 put in said deeds a blanket clause covering all lands that the Board owned, whether described in the deeds or not, the Board obligating itself, on request, to make such further deeds and conveyances as might be necessary. It was well known to the parties executing said deeds that the Board did not at that time have title to as much as 885,040.31 acres mentioned in said deeds and that such acreage did not in any respect represent the acreage of the lands intended to be conveyed. After said deeds were made, defendants, at great expense, had abstracts of the titles to said lands made and discovered that the deeds aforesaid contained in many instances duplicate, triplicate and even quadruplicate descriptions of the same land, contained large bodies of land sold to the State at tax sale, which had been redeemed from the auditor before said auditor's deeds were made to the Levee Board, contained large bodies of land which the Levee Board had permitted owners to redeem after said auditor's deeds were made, contained large bodies of land quit claimed by the Levee Board to the owners because the State tax sales thereof were void, contained all lands theretofore sold by the Board, contained large bodies of land sold for taxes where the sales were absolutely void, for many of which lands these defendants on the advice of their counsel gave quit claim deeds to the owners and of many of which lands these defendants were evicted by the owners in the courts, so that the total acreage of said lands to which these defendants got title by said deeds was about 580,000 acres and there still remains of these 580,000 acres, about 20,000 acres to which the title is extremely doubtful, defendants being now threatened with a suit for 960 acres of land on Sicily Island, and to which they would give a quit claim deed were it not for this suit, as the records show that said lands were redeemed from the State tax sale before the auditor made his deed therefor to the Levee Board. So that the fact is that the Levee Board realized about 23 cents an acre for the lands it sold, there being among these lands in the Parish of Catahoula large tracts exceeding in the aggregate 20,000 acres which are absolutely worthless, the said 23 cents an acre all around being the full value of said lands at that time and under the circumstances of the sale. That, as a matter of fact, the sale and purchase aforesaid was in the nature of the purchase and sale of a "pig in a poke," neither party knowing how much land the transaction covered, and these defendants expecting to get good titles only
65 to such lands as had been transferred to the State by the United States, remaining unsold by the State, and by the State transferred to said Levee Board.

22. That the matters and things set forth in paragraph 29 of said bill, leaving out all the charges of fraud and illegality, are substantially true.

23. That the matters and things set forth in paragraph 30 of

said bill are true to this extent only that a few of said deeds above referred to in paragraph 29th were for a consideration greater than appears on the face thereof, and that these defendants will on the trial of this case, if it ever comes to trial, give a true and correct showing of all sums received by them for the sale of the lands aforesaid.

24. That as to the matters and things set forth in paragraph 31st of said bill these defendants are not at this time required to answer, as this answer is filed merely in support of their demurrers, and this paragraph of said bill is the subject matter of several of said demurrers.

25. That the matters set forth in paragraph 32nd of said bill are not true, or are not relevant to any issue in this case; that it is not true that said lands sold to defendants were worth at that time at least 50 cents an acre, assuming, of course, that the averments mean market value or saleable value, and that the conclusive proof of this is found in the fact that for more than four years prior to said sale the said Board had been striving to sell said lands at fifty cents and acre and had not succeeded in doing so, and that lands of that character, not only in this State, but in other portions of the South, were selling at 25 cents an acre and less, with guaranteed titles; that in proof of his averment, defendants show that in the year 1899, 1900 and 1901 the Fifth Levee District, composed of the Parishes of East Carroll, Madison, Tensas and Concordia, immediately adjoining the Tensas Basin Levee District, sold 150,000 acres of selected land at 25 cents an acre, which lands taken as a whole were better lands than those sold by the Tensas Basin Levee District to the defendants; that in the year 1895 and subsequent years,
66 the Caddo Levee Board sold many thousand of acres of its swamp and overflowed lands with full warranty at 10c, 15c and 25c an acre, lands which were selected lands and were more valuable than the lands sold to the defendants; that in 1900 the Red River, Atchafalaya & Bayou Boeuf Levee District sold at 30c an acre 142,174 acres of land in Rapides, Avoyelles and St. Landry Parish, a large portion of which lands were above overflow and all of which were more valuable than the lands sold defendants, and that in 1901 and 1902 the Atchafalaya Basin Levee District sold approximately a million acres of swamp and overflowed lands for $120,000.00, or about 12c an acre; that what the unsold portion of said lands are worth at this time is utterly irrelevant to any issue in this case, as since that time lands of this character have increased in many instances ten and twenty fold in value.

26. That the matters and things set forth in paragraph 33rd of said bill are matters which these defendants are not required to answer, being an attempt on the part of the complainant to correct the allegations made by it in the pleadings filed in the State court, but they do illustrate the proneness of the learned attorney general to make extravagant allegations.

27. That the matters and things contained in paragraph 34th of said bill are not true in law or in fact; that the contract between the complainant and defendants was a sale in intention, in form

and in substance for a full, fair and adequate price, and there was no donation of the property, open or disguised; nor any intention of making a donation of said property; that the plaintiff from the beginning up to this time, in its bill, has treated said contract as a sale and that the alternative averment in this paragraph is an absurdity in law and in fact on its face.

28. That the matters and things set up in the 35th paragraph of said bill are matters which these defendants are not required to answer, being an attempt on the part of the complainant to correct the allegations made by it in the pleadings filed in the said Court,
but they do illustrate the proneness of the learned attorney
67 general to make extravagant allegations, and furnish a measure by which the other allegations of the complainant's bill may be judged.

29. That it is true, as averred in the 36th paragraph, that the Tensas Delta Land Company, Ltd., is a limited liability partnership association under the laws of the State of Michigan, domiciled in Grand Rapids, and that Fred G. Hudson, of the Parish of Ouachita, is the lawful agent of said association in the State of Louisiana; that the averments in said paragraph, which declare that the price paid for the said lands was less than half their value at the time of the sale are untrue, and that the demand to set aside said sale for lesion beyond moiety is barred on its face by the prescription of four years, which defendants have pleaded in their demurrer, in support of which this answer is filed.

30. That the matters and things set forth in the 37, 38, 39 and 40th paragraphs of said bill are matters which these defendants are not required to answer unto in this answer, which is filed in support of their demurrers, but these defendants aver that the complainant never received any information and never had in its possession any evidence of any fraud or corruption practiced in respect to said sale by there defendants or any of them, or of any of the members, officers, agents or employees of said Board, and that all the pretended information and pretended facts which the complainant now claims to be evidence of such fraud and corruption, none of which are set out in the bill, were known to the officers and members of the Levee Board from the time said contract was made or within one year thereafter.

And further answering defendants aver that in addition to the purchase price of said property, with interest on the deferred payments, which amounts to $142,000, paid $30,000 on Nov. 9, 1898; $35,333.33 on Nov. 9th, 1899; $37,333.33 on Nov. 9, 1900, and $39,333.33 paid on Nov. 9, 1901, these defendants have, as the complainant well knows, year by year up to and exclusive of the year 1911 paid on the said lands State, parish, school and levee taxes levied by the said Board, which taxes up to the year 1911 reach the sum of one hundred and fifty-one thousand, eight hundred and ninety-six & 92/100 dollars, without interest; that they
have also spent, as complainant well knows in the necessary
68 protection and preservation of said lands from trespass and depredation, a sum exceeding $40,000, and that they have

also spent, as complainant well knows, in the necessary costs in making sales of said land, without which said sales could not have been made, sums exceeding $50,000.00, all of which sums, with legal interest thereon from date of expenditure to — complainant has not, by its bill, offered to return or repay, and that for these reasons the bill of the complainant is without equity, as set up in defendants demurrer.

Wherefore, defendants pray that their demurrers herein filed may be sustained and the complainant's bill dismissed and its demands rejected, and in case said demurrers are overruled, that defendant's right to answer said bill as it may in law be required to do be reserved.

FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG, *Sol'rs.*
EDGAR H. FARRAR,
HENRY BERNSTEIN,
Counsel

F. G. Hudson, being duly sworn, deposes and says, that he is the duly appointed legal agent of the defendant limited partnership in the State of Louisiana; that all the officers and members of the said limited partnership are absent from the State of Louisiana, and from this circuit; that he has read the foregoing answer, and that the same is true in most respects of his own personal knowledge, having been the counsel employed by J. W. Brown to represent him in the purchase of said lands from the Tensas Basin Levee District, and as to the balance of said answer the same is true to the best of his knowledge, information and belief. F. G. HUDSON.

Sworn to and subscribed before me this 14th day of December, 1911.

[SEAL.] W. A. MYATT,
Clerk D. C., 6th Dist. of La.

Indorsed: No. 694. In Equity. U. S. Circuit Court. West. Dist. of La., at Monroe. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Co., Ltd. Answer in Support of Demurrer. Noted in Chancery Order Book, Vol. 2, folio 475. Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

69 United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LTD.

Exhibit Marked No. 13, Attached to Answer in Support of Demurrer.

Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

Levee Board Proceedings.

August Meeting.

Pursuant to call, the Commissioners of the Tensas Basin Levee Board met at the City Hall, in the City of Monroe, La., on Wednesday, August 10th, 1898, and on roll call the following members were present: Jno. P. Parker, E. M. Hicks, W. Al Collins, J. Q. Graves, R. E. Yancy, W. C. Buckhanan and John A. Hemler; there being a quorum present, Mr. Parker was called to the chair to preside over said meeting as president "pro rempus"; Jno. F. Loveless, secretary of the retiring Board, acting secretary.

By Mr. Yancy: Be it resolved by the Board of Commissioners of the Tensas Basin Levee Board, that J. F. Loveless, the secretary of said Board, be, and he is hereby directed, to make and submit at the next meeting of said Board, to be held on September 27th, 1898, a full, complete and detailed report of the transaction of the said Board during the period of his incumbency, the said report to include and embrace an itemized account of the receipts and disbursements of said Board during the said time, of every character and kind, and also of all actions had or contracts made respecting the lands and other property belonging to the said Board.

On motion the above resolution was adopted.

70 Mr. Willis, the attorney for the retiring Board, ask- for and obtained consent of the Board to file his application, made to the former Board, as attorney for same, which was read and filed. Said application being offered to this Board for reappointment as attorney for the present Board. Whereupon Mr. Collins moved that the appointment of attorney for this Board be postponed until to-morrow, which was agreed to.

On motion the president appointed Messrs. Yancy & Collins and Hicks a committee to select a suitable room for the use of the Board.

On motion the president appointed Messrs. Buchanan, Graves and Hemler a committee on finances.

On motion each member of the said Board was permitted to select

for the official organ of said Board one paper in his respective parish, whereupon the following were selected and made the officials organs:

Morehouse Clarion at	per	annum
Richland Beacon at	"	"
Catahoula News at	"	"
Franklin Sun at	"	"
Floyd News at	"	"
Caldwell Watchman at	"	"
Monroe Evening News at	"	"

On motion Mr. Willis was permitted to withdraw his application for appointment as attorney for the Board.

On motion the Board adjourned till to-morrow morning at 9 o'clock.

THURSDAY, August 11th, 1898.

Board met pursuant to adiournment; all members present and business proceeded with as follows:

By Mr. Hemler: Be it resolved by this Board, that J. W. Willis be retained as attorney for this Board for one year, at a salary of $1,000.00, and this amount shall be the only compensation allowed him for any and all services rendered by him to said Board. And be it further understood that this is to cover all amounts now due him for services on all suits now pending for or against
71 this Board, or may be pending at the close of the year. The above motion failed to pass. Yeas 2, nays 4; president not voting.

On motion of Mr. Yancy the Board went into the election of an attorney for the Board, whereupon Mr. Hicks nominated Mr. E. T. Lambkin as attorney for the Board, and there being no other nominations, Mr. Lambkin was unanimously elected. Mr. Lambkin came before the Board and in a few appropriate remarks thanked the Board for the honor they had conferred upon him.

On motion the president and Mr. Collins were authorized to sell to Mr. Calhoun 150 acres of land, at a price to be agreed on by them.

By Mr. Collins: Be it resolved by this Board, that the president be, and he is hereby authorized to offer a reward of $50.00 for the arrest and conviction of any person or persons trespassing on the lands or property of this Board .

The committee appointed to secure suitable room for the use of this Board recommended that the Board accept the offer of Mr. Blanks for the room over the Merchants' & Farmers' Bank, at $7.50 per month, which was accepted by the Board.

The committee on finance made the following report:

We, your committee on finance, beg to report as follows: We have had under consideration the following claims, which we have approved as follows: Claim of Pickayune for $51.20 approved for $51.20; claim of Commercial Appeal, $87.30, approved for $51.20; claim of Richland Beacon News, $35.00, approved for $25.00—which we recommend be paid.

Approved.

W. C. BUCHANAN, *Chairman.*

On motion all parties wishing to apply to the Board for the purchase of lands submit application to this Board on or before the 27th day of September, 1898.

On motion Mr. Simms, the land agent for the Board, shall be allowed 2 cents per acre for all and any lands sold between this and the 27th day of September, 1898.

Mr. Simms, the land agent for the Board, filed a written
72 report, which was read and ordered spread upon the minutes of the Board, viz.:

MONROE, LA., August 10th, 1898.

To the Honorable President and Members of the Board of Commissioners of the Tensas Basin Levee District:

Since my last report I have pressed negotiations for the sale of your lands with all possible diligence. Two serious, if not insurmountable, obstacles have presented themselves. 1st, The continued depression of business and scarcity of money seeking investment. 2nd, The pendency of the Hoyt suit. This last, I find, would absolutely prevent a sale unless the Hoyt interest was acquired by the Board so that a clear title could be given to the purchaser. It was thought by agents in the East, whose services I have secured, that as soon as the Presidential election had been held there would be a marked improvement in the financial condition of this country and large volumes of money, which have for several years past been hoarding up, would seek investment. But events have not fully justified their expectations, though there is a reason to believe that the congestion which has prevailed in the financial condition of the country for several years past will not much longer continue. I have found it impossible to conclude a sale pending the Hugh suit and my efforts have, therefore, been directed to concluding negotiations so as to submit to the Board the proposition of investors with a view of your taking such action in regard to the Hugh claim as you deem advisable.

The uncertainty, however (because it seems in the estimation of investors all lawsuits are uncertain) of the pending suit has prevented me from reaching any definite conclusions with the parties who have been negotiating for the property; negotiations, however, are still pending and I have every reason to believe that I will be able to conclude a sale on terms which will be entirely satisfactory to the Board at an early period, now that the titles to the land have been settled by the courts.

In endeavoring to accomplish a sale of this property I have neither spared time or expense, since my appointment as agent, Jan. 12, 1894, up to the present time. Have made on- [one] trip personally to Cincinnati, Washington and New York to confer with
the prospective investors. My counsel has made two trips
73 each to the same places, and we have made numerous visits to New Orleans, Memphis, Little Rock, Pine Bluff and other cities.

Negotiations for so large a property are necessarily slow, investors desire and must be furnished with all information in re-

gard to the location of the property, its timber resources, etc., and the kind of titles under which it is held. This I, with great labor and expense, have furnished them, and in my opinion the principal part of the work necessary to the disposal of the lands has been accomplished. Among the latter, which I was compelled to furnish*ed*, was an elaborate legal opinion as to the validity of the title, a report of a competent timber expert, who made a personal examination of the entire property. I am satisfied my failure to make a sale of the property has resulted from the pendency of the Hugh suit and the hope on the part of the investor that in the event the title should be decided by the Courts, to have been vested in the La., Ark. & Mo. Ry. Co. that more favorable terms could be had from that company than I was authorized or willing to give.

There has been some considerable pressure brought to bear on the Board and the land agent by private individuals who sought to purchase small tracts of land for homes, which really I favor. Could these lands only be sold which—isolated or not connected with large bodies, when such sales would necessarily detract from the adjoining property.

This being the largest body of lands now on the market in the South, I feel assured that the time is not far distant when these lands can be sold to investors at a price which will be of inestimable — to the district.

Therefore, I recommend that these lands not be forced on the market and sold at a sacrifice.

Respectfully submitted for your consideration.

Your obedient servant,

(Signed) J. W. SIMMS,
Land Agent.

On motion the Board tendered thanks to the mayor and councilmen of the City of Monroe for the use of the City Hall.

There being no further business, ordered that the Board adjourn till September 27th, 1898.

(Signed) JNO. P. PARKER, *President.*

Attest:

JNO. F. LOVELESS, *Secretary.*

74 Copy. Copy. Copy.

Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

STATE OF LOUISIANA,
Parish of Ouachita:

I, H. R. Speed, secretary of the Board of Commissioners of the Tensas Basin Levee District, do hereby certify that the above and foregoing six (6) pages are a true and correct copy of the minutes of the Board of Commissioners of the Tensas Basin Levee District,

held at their office and domicile on the 10th day of August, A. D. 1898.

In testimony whereof, witness my official signature and seal of office on this 2nd day of November, A. D. 1909.

[SEAL.] H. R. SPEED, *Secretary.*

United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

EXHIBIT MARKED No. 14, Attached to Answer in Support of Demurrer.

Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, Western District of Louisiana.

MONROE, LA., Nov. 1st, 1898.

Pursuant to the call of the president, the Commissioners of the Tensas Basin Levee District met at the office of said Board in the City of Monroe, La., on Tuesday, Nov. 1st, 1898, at 12 o'clock and on roll call the following members were present: John
75 P. Parker, president; W. A. Collins, E. M. Hicks, John A. Hemler and J. Q. Graves, W. C. Buchanan and R. E. Yancey being absent.

The minutes of the previous meeting were read and corrected and as corrected adopted.

On motion of Mr. W. A. Collins the secretary was authorized to forward to each of the journals, at the end of each quarter, warrant for ¼ of the respective sums allowed for printing the proceedings of the Board; the Board then took a recess until 7:30 P. M.

At 7:30 P. M. the Board met pursuant to adjournment, with the following members present and answering roll call: Jno. P. Parker, president; W. A. Collins, E. M. Hicks, J. Q. Graves, J. A. Hemler and Mr. W. C. Buchanan, Mr. R. E. Yancey still being absent.

The petition of Mr. A. P. Martin, of Tensas Parish, asking for the extra compensation for levee work, was read to the Board by Mr. Wade R. Young, and after interrogating Mr. Martin, on motion of Mr. W. A. Collins the petition was unanimously denied.

Mr. J. W. Simms, land agent of the Board, submitted the following report:

MONROE, LOUISIANA, Nov. 1st, 1898.

"To the Honorable Jno. P. Parker, President, and Members of the Board of Commissioners of the Tensas Basin Levee District:

Since my last report made at your regular meeting August 10th 1898, I have continued my efforts to sell your lands, but have been

unable to find a purchaser at the lowest price fixed by the Board, 50 cents per acre. My efforts to sell these lands convinces me that they cannot be sold at fifty cents per acre. I have secured a proposition for the purchase of all the lands, and the gentleman representing himself and associates is present and will in person submit to the Board his proposition.

Your obedient servant,

(Signed) J. W. SIMMS,
Land Agent.

Mr. J. W. Brown, of Memphis, Tenn., then made an offer to purchase all the lands of the Board for the sum of $130,-
76 000.00, $25,000.00 thereof to be paid in cash and the balance in equal annual installments of 1, 2 and 3 years, with interest at the rate of six per cent per annum.

On motion of Mr. Hicks, Mr. W. A. Collins was elected to go on the levees and look after the contractors with instructions to urge upon them the necessity of completing the works within the time specified in the contract and to look after the same.

The report of Messrs. Parker & Hicks, the committee appointed to inspect the levees, was received, read and adopted.

On motion of Mr. Hemler action was deferred on Mr. Brown's proposition until Wednesday morning, November 2nd, 1898, at 9 o'clock. On motion the Board adjourned until Wednesday at 10 A. M.

On Wednesday morning, November 2nd, 1898, at 10 A. M. the Board met pursuant to adjournment, all members present with the exception of Mr. R. E. Yancey.

Quite a number of claims were presented to the Board and by the Board referred to the finance committee; the Board then took a recess until 7 o'clock in the evening, in order that Mr. Yancey might be present and also for the purpose of receiving any other propositions which might be made for the purchase of the lands.

At 7:30 o'clock P. M. the Board met, with all members present. Mr. Jno. S. Boatner submitted a verbal proposition for the purchase of all the lands belonging to the Levee Board, which he said he could find a purchaser for, for from $150,000.00 to $170,000.00 cash by the January meeting. Mr. Boatner stated that he had been endeavoring to find a purchaser for the lands for the past 6 or 7 years, and had experienced no little difficulty in the undertaking. That he and his associates had, as he believed, succeeded in finding a purchaser, who would have been present at this meeting of the Board, but who had died a few days previous, but that if the sale should be postponed until the January meeting, he believed the party he had in view would be in a condition to comply with the offer submitted through him.

Mr. F. G. Hudson, representing Mr. Brown and his associates, contended that the proposition submitted by Mr. Brown was the only one of a business-like nature which had been submitted for

the consideration of the Board, which, after a considerabl
77 discussion by Mr. Hudson and Mr. Boatner, resulted in
change being made in the proposition, Brown agreeing t
pay $30,000.00 in cash and the entire proceeds of all the land
and timber which might be sold to the Board until the full pay
ment of the purchase price, instead of only 20 cents per acre o
the lands sold as originally proposed.

Mr. Ivy I. Davis here stated that he represented a French syndi
cate that was anxious to buy the lands and would pay $150,000.0
for them, one-half in cash and the balance in a reasonable time
and he asked that the Board delay sale of the lands or defe
action on the Brown proposition until Thursday at 2 o'clock, b
which time he would hear from his syndicate and be in a positio
to make them a definite offer, but in case he did not do — then h
would ask no further indulgence of the Board and would advis
that they accept Mr. Brown's proposition, which he considered th
only tangible one before the Board.

Mr. Hudson then stated that in case the land should not b
sold at the present meeting, Mr. Brown would withdraw his propo
sition and he might, or not, renew it on the following day.

Mr. W. A. Collins opposed the sale of the lands at the price an
on the terms as proposed by Mr. Brown, and moved that the sal
of the lands be postponed until the next regular meeting, whic
motion was lost, Messrs. Collins and Buchanan voting in favor o
the motion and Messrs. Yancy, Hicks, Graves, Hemler and Parke
against it.

In order to give Mr. Davis an opportunity to submit his propo
sition for the purchase of the lands, on motion of Mr. Yancey, th
Board adjourned to assume its session at 10 o'clock Thursday morn
ing, November 3rd, 1898.

At 10 o'clock Thursday morning, Nov. 3rd, 1898, the Board
met pursuant to the adjournment. Mr. Buchanan, chairman o
the finance committee, made the following report:

"The claim of Mr. J. W. Willis, attorney of the old Board fo
legal services amounting to $3,919.92, has been carefully examine
and we have concluded to approve his bill for the following sums
which we think under the circumstances, is a very fair and liber
settlement — Mr. Willis, and which is made or offered as a compro
mise settlement, to-wit:

78 As the balance on salary claim.....	$50.0
Fee in case of St. L. I. M. & S. Ry. Co.....	350.0
Fee in case of Sledge, et als., vs. Red Fork Levee Board, et al	150.0
Fee in case of Louis H. Hyde, receiver N. O. & N. W. R. R.	100.0
Fee in case of vs. Tensas Basin Levee Board.....	.....
Fee in case of R. L. Crook & Co. vs. Tensas Basin Levee Board	50.0

Fee in case of Tensas Basin Levee Board vs.—

Alex Moore	10.00
J. H. Rymes	10.00
James Eppinett	10.00
Henry Earle	10.00
Johnson Bennett	10.00
Thos. Tharp	10.00
Henry Beal	10.00
Mrs. M. J. Templeton	10.00
Making a total amount of	$780.00

The following miscellaneous claims we find to be correct and ask that same be paid:

Scimiter Pub. Co., advertising levee contract	$15.85
Expenses of J. P. Parker, Pt., to Memphis, Tenn., to let contract	$29.00
Expenses of Hicks & Davis inspecting levees	71.00
Per diem, E. M. Hicks, 8 days at $4.00	32.00
Per diem, Walter S. Davis, 8 days $4.00	32.00
G. W. Naff, clerk, recording deed	2.60
Memphis Appeal	87.30
W. A. Hedrick, clerk, recording deed	4.00
Office furniture	34.00
Moving levee from Rayville to Monroe and miscellaneous expenses of office $80.65, less warrant for $65.00, already paid, leaving a balance of	15.65
Expenses of J. F. Loveless to Arkansas City	14.30
Monroe H'dw'e Co. for lamp for Board	3.00
Dresser & Wisner, for putting lands on roll which had not been previously assessed Richland Parish	163.00
The same for Franklin Parish	79.35
Total	$582.60

Respectfully submitted,
(Signed) W. C. BUCHANAN, *Chairman.*

79 Which reports were received and adopted and the claims ordered paid.

Mr. Yancey moved that the president be authorized to settle the commission due Mr. J. W. Simms, land agent, for sale of the lands made by the Board since August 11th, 1898, and that his appointment as land agent be revoked, which motion was adopted.

Mr. J. W. Brown submitted a letter from Mr. R. B. Blanks, president of the Merchants and Farmers Bank, stating that his bank would cash Mr. Brown's check, or guarantee its payment for $30,000.00, the cash payment of the land. Mr. Hudson then renewed the proposition, changed in some particulars, which is as follows:

To the Honorable Board of Commissioners of the Tensas Basin Levee District, Gentlemen:

I hereby submit to your Honorable Board the following proposition to purchase all the lands now owned by you in the Tensas Basin Levee District, and situated in the Parishes of Morehouse, Ouachita, West Carroll, Richland, Franklin, Catahoula and Caldwell, State of Louisiana, for the sum of $130,000.00 on the following terms, viz.: $30,000.00 in cash when the deeds are delivered, and the balance on or before 1, 2 and 3 years from the date of sale in equal annual installments, with interest at the rate of six per cent per annum, payable annually or prior payments may be made on any of the deferred payments, your Honorable Board to retain a vendor's lien and special mortgage on said property to secure the deferred payments, but upon payment to you of all proceeds from sale of lands, or the timber thereon, or any of the lands which may be sold by me, covered by said vendor's lien and mortgage, you are to release the said land upon said lien and mortgage and indorse the amount so paid upon the first of said deferred payments next falling due until all of the deferred payments are satisfied.

Respectfully submitted,

J. W. BROWN, *Agent.*

Mr. Hemler moved that the Board accept this proposition, but in case Mr. Davis should come up with a better one, then the action to be considered, otherwise to stand. Mr. Hudson stated that
80 if Mr. Davis should offer a better proposition at 2 o'clock Mr. Brown would gladly release the Board from its action. Mr. Yancey moved that Mr. Davis be given until 2 o'clock, which was carried.

Mr. Yancey moved that the salary of the secretary be fixed at $1000.00 per annum, which was duly seconded by Mr. Hemler and carried by a vote of 4 to 3. He then moved that the Board elect a secretary to assume the duties of the office at the next regular meeting in January, the present secretary to hold over until then. Mr. Yancey's motion having prevailed, Mr. Hemler nominated Jno. F. Loveless, and Mr. Collins nominated Mr. J. L. Borden. Mr. Borden was elected by a vote of 5 to 1, Mr. Parker not voting. The Board then took a recess until 2 o'clock in order to give Mr. Davis an opportunity to submit his proposition.

At 2 o'clock the Board convened pursuant to adjournment, all members being present. Mr. Davis appeared and read several telegrams to the Board, none of which were by any means *were* definite and which he, himself, admitted not to confer authority upon him to submit any definite or business-like proposition and he would ask no further consideration or indulgence from the Board.

Mr. Hemler moved that Mr. Brown's proposition as last stated be accepted. Mr. Yansey objected to the proposition and insisted on its being modified so as to pay the entire proceeds derived from the sale of the lands and timber to be conveyed to the Board until the entire purchase price had been discharged, which substitute was accepted by Mr. Hemler and also by Mr. Brown, who made his propo-

sition conform therewith. On a vote being taken, the proposition was accepted, as apears from the following vote: Messrs. Parker, Yancey, Hemler & Graves voting aye, and Messrs. Collins, Buchanan and Hicks voting nay. After Mr. Hicks asked to change his vote, giving his reasons for having voted against the proposition was because he desired a cash payment of $50.000.00 instead of $30,000.00.

At the request of Mr. Brown, Mr. E. T. Lambkin, attorney for the Board, was asked to prepare a formal resolution, authorizing the sale of the lands and empowering and instructing the president to execute deeds in conformity with the price and terms contained in Mr. Brown's proposition, as amended, which resolution
81 was adopted and which reads as follows: "Be it resolved by the Board of Commissioners of the Tensas Basin Levee District, in regular session convened, that the proposition made to this Board on Tuesday, November 1st, 1898, by J. W. Brown, agent, for the purchase of all the lands and real rights pertaining thereto, granted to this Board and levee district by the General Assembly of the State of Louisiana, and situated in the Parishes of Morehouse, Ouachita, West Carroll, Richland, Franklin, Catahoula and Caldwell, Louisiana, at the price and sum of $130,-000.00 for the whole of said property, of which price the sum of $30,-000.00 — and the balance in three equal annual installments due on or before 1, 2 and 3 years from date and bearing six per cent per annum interest from date until paid, and secured by a special mortgage and vendor's lien on the property sold, be and the same is hereby accepted.

Be it further resolved, that Jno. P. Parker, president of this Board, be, and he is hereby instructed, authorized and fully empowered to execute and deliver, for and on behalf of and in the name of this Board, unto the said J. W. Brown, or his assigns, all necessary indentures, deeds, titles and conveyances, for the proper transferring and conveying of full ownership in *for* of said property in compliance with the terms of said proposition, and to receive and receipt for and grant full acquittance and satisfaction for the purchase price of said property.

Be it further resolved, that said president is hereby further authorized and fully empowered to make, execute and deliver unto said purchaser, his heirs, legal representatives or assigns, all supplemental deeds and titles, or acts necessary from time to time for correcting errors in description of the property herein authorized to be conveyed, or lands erroneously, unintentionally or inadvertently left out of the deeds authorized to be made and executed and generally to do and perform all things for the purpose of carrying out and putting into effect said proposition to buy said property and this resolution accepting the same.

Be it further resolved, that the said J. W. Brown, and his assigns, are hereby subrogated to all the rights of this Board in and to the property hereby authorized to be conveyed, or growing out of the same, or in anywise connected therewith; and also all rights
82 of action now possessed by this Board for trespasses committed on said lands. This sale is made without warranty, except as against this Board.

The vendor's lien and mortgage retained by this Board is to be released and cancelled upon such portions of the property herein authorized to be conveyed, and may be sold by the vendees, or his assigns, prior to the maturity of the notes given for the deferred payments, upon payment to the Board of the proceeds of such sales or lands or timber "as a credit on such deferred payments, until they are fully paid."

On motion the Board adjourned to 8:30 o'clock A. M. Friday, November 4th, 1898.

On Friday at 8:30 A. M. the Board met pursuant to adjournment and the minutes of the *proceeding* [preceding] day were approved and adopted, and there being no further business, the Board adjourned to meet the second Wednesday in January, 1899.

(Signed) JNO. P. PARKER, *President.*
(Signed) J. L. BORDEN, *Secretary.*

Copy. Copy. Copy. Copy.

STATE OF LOUISIANA,
Parish of Ouachita:

I, H. R. Speed, secretary of the Board of Commissioners of the Tensas Basin Levee District, do hereby certify that the above and foregoing seven pages, are a true and correct copy of the minutes of the Board of Commisisoners of the Tensas Basin Levee District, held at their office and domicile on the 1st day of November, A. D. 1898.

In testimony whereof, witness my official signature and seal of office on this the 2nd day of November, A. D. 1909.

[SEAL.] H. R. SPEED, *Secretary.*

Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

83 United States District Court, Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LTD.

EXHIBIT MARKED No. 15. Attached to Answer in Support of Demurrer.

Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, Western District of Louisiana.

Contract.

Tensas Delta Land Company, Limited, et al.
to
James W. Brown et al.,
and
James W. Brown et al.
to
Tensas Delta Land Company, Limited, et al.

This agreement made the 10th day of November, 1898, between James D. Lacey & Company of Grand Rapids, Michigan, and James W. Brown, of Memphis, Tennessee, parties of the first part, and the Tensas Delta Land Company, Limited, a Michigan partnership association of Grand Rapids, Michigan, party of the second part, witnesseth, as follows:

1. The said land company, limited, is the owner of lands in the State of Louisiana, acquired November 9th, 1898, from the Board of Commissioners of the Tensas Basin Levee District, and said lands were acquired by said company, through the offices of the parties of the first part hereto.

2. For the purpose of returning to said company, and the shareholders thereof, all moneys advanced by it or them or here-
84 after to be advanced by it or them for the purchase of said land and the payment of expense and taxes connected with said lands, and their future care and sale, it is intended to make sales of said lands in whole or in part from time to time, by agreement between the parties of the first part hereto, and the shareholders of said company. It is provided that all the investment of money by the shareholders, present or future, for the purchase of stock for the payment of expenses and taxes, with interest thereon, and for all advances in any way made by said company, or the shareholders thereof in the interest of said company, with interest thereon, shall be first returned to the shareholders of said company and the profits of said company, if any shall accrue, shall be divided according to said agreement hereinbefore referred to. The profits of said Lacey & Company, and said Brown, if any, are to be in lieu of all their services in and about the acquiring and care and sale of said lands, and the expenses which they are to pay in connection therewith, until such time as all of said company's and said shareholder's advances and interest shall be fully repaid.

C [3] It is agreed that said Lacey & Company and said Brown shall, on the conditions hereinafter named, have the exclusive agency for the sale of said lands, for the period of three years from the 9th day of November, 1898, all of which sales shall be subject to the by-laws of said company and the resolutions of its shareholders and managers from time to time made, except as herein otherwise especially provided. In the making of such sales for the purpose of refunding and liquidating the advances of said shareholders and said company, and the interest thereon and all the debts

of said company, if any in the meantime accrued, a minimum price of 50 cents net to the company per acre is hereby fixed upon, and in all sales of said lands or any part thereof, it is the agreement of said Lacey & Co., and said Brown, that they will secure as high a price for said lands or any portion thereof as possible, and that whatever the price may be for which said lands, or any part thereof are sold, whether it be 50 cents per acre or more, it shall be used to pay the debts of said company and repay such advances and investments, expenses or debts.

4. All of said services rendered and to be rendered by said
85 Lacey & Co., and said Brown up to the time that all of such investments, advances, debts and interest are fully repaid as hereinbefore recited, shall be rendered without compensation, and all of the expenses in and about their said services and the sale of said lands, paid or to be paid by them as hereinbefore recited, shall be without recourse therefor in any way or form upon said company, or the shareholders thereof. The expenses which said Lacey & Company and said Brown are to pay in and about the rendering of such services are as follows:

a. All expenses which they have incurred in and about the securing of said lands.

b. They shall prepare, at their own expense, accurate maps and plats of said property, after the titles thereof shall have been abstracted and perfected.

c. They shall pay their own traveling and living expenses incidental to the showing and sale of the lands and all the expenses of such men as they shall employ for that purpose.

d. They shall pay the expenses of all such advertising in the trade journals as may be necessary to keep the property before the public.

5. The said Lacey & Company and the said Brown shall, from this time on, use their best talent and endeavor to secure purchasers for and sales of said lands at their own expense and without compensation as above recited, and in case of the death of said first parties, or either of them, before the accomplishment of such repayment, said company shall have the right to employ a proper person or persons to do the work herein provided to be done by said first parties or either of them and the expense thereof, with interest paid on any sum or sums advanced on such account, shall be charged to the interest in said company of said first parties, or either of them on whose account such a payment is made, to be deducted from the share of the first parties or the share of either of them in said company.

6. And similarly and in case of the disability of the said first
parties or either of them, or in case *if* the refusal or neglect
86 of the said first parties or either of them, or in case of their failure to make sales sufficient to pay the said advances, debts, expenses and investments with the interest thereon within the time hereinbefore provided, then said company shall be entitled to employ some persons or person to do the same in place of first parties or either of them and the expenses thereof charged to the said first parties or either of them in the company, as hereinbefore recited.

In witness whereof, the parties of the first part hereto have subscribed this instrument, and the party of the second part hereof has

caused the same to be executed by its chairman and secretary by authority of the Board of managers thereunto conferred.

(Signed) J. D. LACEY & COMPANY.
J. W. BROWN.
TENSAS DELTA LAND COMPANY, LIMITED,
By J. D. LECEY, *Chairman*,
[SEAL.] WOOD BEALE, *Secretary*.

[Tensas Delta Land Company, Limited. Organized October 29th, 1898. Seal.]

STATE OF TENNESSEE,
County of Shelby:

Before me, R. J. Black, a duly and legally qualified notary public in and for the said State and county, personally appeared James W. Brown, who being first duly sworn, states on oath as follows, to-wit: That he is the identical James W. Brown named as one of the parties to the above and foregoing and hereto attached agreement and that he signed the same together with the other parties thereto, to-wit, James D. Lacey & Company, and the Tensas Delta Land Company, Limited, by James D. Lacey, chairman, and Wood Beale, secretary, for the consideration and purposes therein named and expressed; that the signatures of himself and the other parties to said agreement as thereto signed are true and genuine.

Affiant further says that after the execution of this agreement and after the deposit with the Michigan Trust Company, trustee of the stock in said agreement referred to, in the Tensas Delta Land Company, Limited, this affiant executed assignments to sundry persons of certain interest in said stock so deposited, and that under
87 assignments made by affiant the thirty-seven thousand five hundred ($37,500.00) dollars of the capital stock of the Tensas Delta Land Company, Limited, to which affiant became entitled under and by virtue of the provisions of said attached agreement hereto, taken in connection with another agreement herein mentioned, is now held and owned as follows:

a. Fred G. Hudson, of Ouachita Parish, Louisiana, face value	$3,750.00
b. G. M. Gavey, of Memphis, Tennessee, face value	2,350.00
c. Jacob Thompson, Coahoma County, Mississippi, face value	781.50
d. J. W. Crawford, of Memphis, Tennessee, face value	500.00
e. R. H. Beard & T. C. Looney of Memphis, Tenn., face value	883.00
f. R. B. Blanks, of Monroe, La. face value	7,500.00
g. R. E. Palmer & James Paine of Memphis, Tennessee, in indivision, as between each other, and in indivision with affiant under a written contract between them, fixing their respective rights, face value	6,372.50
h. R. E. Palmer, J. W. Palmer, James Paine, E. G. Nelson & Joseph Townsend, in indivision with affiant, under a written contract between them, fixing their respective rights—face value	15,362.50

That affiant and the said assigns, R. E. Palmer, James W. Palmer, E. G. Nelson, James Paine, Joseph Townsends and R. B. Blanks have filed a petition before the Honorable Judge of the Sixth District Court, holding therein for the Parish of Ouachita and State of Louisiana, claiming among other things that under said agreement hereto attached, and under a certain other agreement between affiant and James D. Lacey & Company on the one part and Thomas Hume, Ransom Luce, T. Stewart White, Thomas Friant, John C. Rugee, Joseph J. Tucker and Anthon Fodenpyl on the other part, which last named agreement was executed contemporaneously with the agreement hereto attached, that this affiant and the said as-
88 signs are the owners of an undivided one-fourth interest in all of the lands lying in *the lands lying in* the Parishes of West Carroll, Richland, Franklin, Caldwell, Morehouse, Catahoula and Ouachita, in the State of Louisiana, which were conveyed to the Tensas Delta Land Company, Limited, by the Board of Commissioners of the Tensas Basin Levee District, on the 9th day of November, 1898, still standing in the name of said Tensas Delta Land Company, Limited, upon the records of said several parishes.

Affiant states that the deeds above referred to conveying said lands, located in said parishes, are recorded in said parishes, respectively, as follows: For the Parish of West Carroll in Book "D," page 168 et seq., of Notarial Record; for the Parish of Richland, in Book "Q," page 49, set seq., of Notarial Records; for the Parish of Franklin, in Book "B," page 206, et seq., of the Notarial Records; for the Parish of Caldwell, in Book "K," page 573, set seq., of the Notarial Records; for the Parish of Morehouse, in Book "V," page 86, et seq., of Notarial Records; for the Parish of Ouachita, in Book "39," page 609, et seq., of Notarial Records; for the Parish of Catahoula, in "Book 7," page 543, et seq., of Notarial Records.

This affidavit is made by affiant and attached to the foregoing instrument, for the purpose of entitling said agreement for record in each of said parishes, and in order to give notice to all who may consult the records in each of said parishes, as to the titles of said lands, of each and all of the claims set up by affiant, and his co-petitioners in said suit, which is hereto referred to for fuller information to all whom it may concern.

J. W. BROWN.

Sworn to and subscribed before me, this 19th day of May, 1903.

R. J. BLACK,
[SEAL.] *Notary Public.*

Original filed in evidence December 2nd, 1903.

R. A. YOUNG, *Clerk.*

Indorsed: Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

89 *Contract.*

J. D. Lacey & Company et al.
to
Thomas Hume et al.,
and
Thomas Hume et al.
to
J. D. Lacey & Company et al.

This agreement made the 10th day of November, 1898, between James D. Lacey & Company of Grand Rapids, Michigan, and James W. Brown, of Memphis, Tennessee, parties of the first part, and Thomas Hume, Ransom C. Luce, T. Stewart White, Thomas Friant, John C. Rugee, Joseph J. Tucker, and Anton G. Hodenpyl, parties of the second part, witnesseth:

1. All the parties hereto, except Brown, are subscribers to or holders of stock in the Tensas Delta Land Company, Limited, a Michigan organization, the said Lacey & Company holding two shares at the present, in order to make them *legible* to hold office in the association. The present capital stock of the said company is fixed at the sum of one hundred and fifty thousand ($150,000.00) dollars, of which the sum of fifty thousand ($50,000.00) dollars has been paid in, and the balance of said stock has been duly subscribed, and is to be paid in in 1, 2 and 3 years from the date of organization of said company.

2nd. The said company has acquired from the Board of Commissioners of the Tensas Basin Levee District, lands in the State of Louisiana, which are fully described in the deeds therefor made and delivered to said company November 9th, 1898, said Brown and said Lacey & Company acquired said lands from said Board, and said above named second parties furnished the money with which to make payment for the same, so far as the same are paid for, and incurred the obligation of subscription to said capital stock for a further sum of said one hundred thousand ($100,000.00) dollars, for the
90 purposes of said company, all on the understanding and agreements herein contained.

3. Said capital stock has been fixed at this time at a sum which is thought adequate to purchase said lands, and pay the expense of such acquirement, but said lands are supposed to be of a value or capable of being made of a value largely in excess of the sum to be paid therefor by the said company, and in excess of the amount of the present capital stock of said company. It is the purpose of all parties hereto that in event of such excess of value resulting from the sale of said lands by said company, the net proceeds of such sales, after repaying said capital stock, interest thereon at six per cent per annum, all taxes and expenses of said company, or the balance of said lands themselves, after such reimbursements, shall be shared by and between the parties hereto equally; that is, that said first parties and their assigns, one-half, and to said second parties

one-half. To that end the parties of the second part shall, as soon as *soon as* their stock certificates are issued, deposit with the Michigan Trust Company of Grand Rapids, Michigan, certificates representing one-half of the capital stock of said company. And it is agreed that upon the fulfillment of the conditions herein contained, and when there shall have been returned to said second parties and their assigns the amount of money which said second parties *in* their assigns shall have already contributed, or shall hereafter contribute to the capital stock of the said company, either on its present capitalization, or on any increased capitalization, together with interest on all such sums, at the rate of six per cent per annum, and after all the expenses of said company to such time, and all advances made therefor by the parties of the second part, or other persons, have been fully paid, with interest thereon at six per cent per annum, all from the earnings of said company or sales of its property and dividends incident thereto, and after all debts of said company, if any shall have been fully paid. Then said certificate of stock, so deposited, shall be turned over and delivered to said first parties, or their assigns by proper assignments to said Lacey & Company, one-half thereof, and to said Brown one-half thereof.

4. It is the agreement of the parties, and one of the con-
91 ditions of this instrument, which is also evidenced by contract between said Lacey & Company and said Brown on one side and said Tensas Delta Land Company, Limited, on the other, that said Lacey & Company and said Brown shall, from this time on, use their best talent and endeavors to secure purchasers for and sales of said lands, and in such service they shall pay their own expenses and perform services as follows:

a. All of their expenses and disbursements in and about the purchase of said lands for said company, at the time of said purchase and prior thereto, are born- [borne] by themselves, without claim of any kinds therefor upon the company.

b. To prepare accurate maps and plats of all the property of said company at their own expense, after the titles to said lands have been abstracted, or so far as they shall have been at any time abstracted or perfected.

c. To pay their own traveling and living expenses, incidental to the showing and selling of the lands, and the expenses of all such men as they have employed or shall employ for that purpose.

d. To do such advertising in the trade journals as may be necessary to keep the property before the public, and to do such advertising at their own expense.

And the service of the said Lacey & Company and said Brown in and about the selling of said lands shall be without compensation to said Lacey & Company and to said Brown, or to either of them, and they shall so continue to pay such expenses and render such services without compensation until all the moneys and interest thereon advanced and to be advanced by said second parties shall be repaid as hereinbefore recited, and until all the expenses of said company and interest thereon, and all advances made for expenses or debts

incurred therefor and interest thereon are repaid, as hereinbefore recited.

And it is further agreed between the parties, that the said Lacey & Company and said Brown, subject to the conditions hereinbefore specified, shall have the exclusive agency for the sale of said lands, for the purpose of returning said moneys and interest, for the
92 period of three years from the 9th day of November, 1898, and at the minimum price to be received by said company for lands sold for the purpose of paying the purchase price thereof and returning said advances, investments, expenses and interest shall be not less than 50 cents per acre, net to the company, but is the express agreement that any sum received on any such sales for said lands, in excess of said 50 cents per acre net, shall be applied likewise to the reimbursement of the funds and the payment of expenses and debts and interest thereon, made by the shareholders of said company, or said company itself, as hereinbefore referred to, and it is expressly agreed that said Lacey & Company and said Brown shall obtain for all of said lands as high a price as possible.

5. And it is the further agreement that in case of the death of the said first parties, or either of them, before the accomplishment of such repayment, it shall be the right of said company to employ some other person or persons to do the work herein provided to be done by said first parties or either of them, and the expense thereof for compensation or expenses with interest on any such sum shall be deducted from any sum which would otherwise be going to said first parties or either of them on account of their, or either of their, stock in said company.

Similarly in the cases of the disability of said first parties, or either of them, or in case of the inability of first parties or either of them, or in the case of neglect or refusal of said first parties or either of them to perform the agreements herein contained, then said com- shall be entitled to make employment of some person or persons to do the same in the place of said first parties or either of them, and the expense thereof charged to the first parties or either of them in the company, as hereinbefore recited.

6. The interest of the first parties herein provided for is in consideration of the services of said first party, and their expenses paid in and about the securing of said lands for said company, and in further consideration of the services which they are to render as herein provided, and the expenses which they are to pay on
93 that account.

In witness whereof, the said parties have set their hands the day and year first above written.

JAMES D. LACEY & COMPANY.
JAMES W. BROWN.
THOMAS HUME.
RANSOM C. LUCE.
T. STEWART WHITE.
THOMAS FRIANT.
JOHN C. RUGEE.
JOSEPH J. TUCKER.
ANTON G. HODENPYL.

STATE OF TENNESSEE,
County of Shelby:

Before me, R. J. Black, a duly and legally qualified notary public in and for said county and State, this day personally appeared James W. Brown, who being first duly sworn, states on oath, to-wit:

That he is the identical James W. Brown named as one of the parties to the above and foregoing and hereto attached agreement and that he signed the same, together with the other parties thereto, to-wit: James D. Lacey & Company, Thomas Hume, Ransom C. Luce, T. Stewart White, Thomas Friant, John C. Rugee, Joseph J. Tucker and Anton G. Hodenpyl, for the consideration and purposes herein named and expressed; that the signatures of himself and the other parties to said agreement, as thereto signed, are true and genuine.

Affiant further says that after the execution of said agreement, and after the deposit with the Michigan Trust Company, trustee of the stock in said agrement referred to, in the Tensas Delta Land Company, Limited, this affiant executed assignments to sundry persons of certain interests in said stock so deposited, and that under assignments made by affiant, the thirty-seven thousand five hundred ($37,500.00) dollars of the capital stock of the Tensas Delta Land Company, Limited, to which affiant became entitled under and by virtue of the provisions of said attached agreement, is held and owned as follows:

94	*a.* Fred G. Hudson, of Ouachita Parish, Louisiana, face value	$3,750.00
	b. G. M. Gavey, of Memphis, Tennessee, face value	2,350.00
	c. Jacob Thompson, Coahoma County, Mississippi, face value	781.50
	d. J. W. Crawford, of Memphis, Tennessee, face value	500.00
	e. R. H. Beard & T. C. Looney, of Memphis, Tenn., face value	883.50
	f. R. B. Blanks, of Monroe, Louisiana, face value	7,500.00
	g. R. E. Palmer and James Paine, of Memphis, Tennessee, in indivision as between each other, and in indivision under a written contract between them fixing their respective rights, face value	6,372.50
	h. R. E. Palmer, J. W. Palmer, James Paine, E. G. Nelson and Joseph Townsend, in indivision with affiants, under a written contract between them, fixing their respective rights, face value	16,362.50

This affiant and the said assigns, R. E. Palmer, James W. Palmer, E. G. Nelson, James Paine, Joseph Townsend and R. B. Blanks, have filed a petition before the Honorable Judge of the Sixth District Court, holding therein and for the Parish of Ouachita, in the State of Louisiana, claiming among other things, that under said agreement hereto attached, and under a certain other agreement contemporaneously executed, that the agreement hereto attached between affiant and James D. Lacey & Company on the one part, and the Tensas Delta Land Company, Limited, on the other part, that

this affiant, his assigns, are the owners of and entitled to an undivided one-fourth interest in all the lands lying in the Parishes of West Carroll, Richland, Franklin, Caldwell, Morehouse, Catahoula and Ouachita, in the State of Louisiana, which were conveyed to the Tensas Delta Land Company, Limited, by the Board of Commissioners of the Tensas Basin Levee District, on the 9th day of November, 1898, still standing in the name of said Tensas Delta Land Company, Limited, upon the records of the said several parishes.

Affiant states that the deeds above referred to, conveying
95 said lands located in said parishes, are recorded in said parishes, respect*fully*, as follows:

For the Parish of West Carroll, in Book G, p. 168 et seq., of Notarial Record; for the Parish of Richland, Book "Q," p. 49, et seq., of Notarial Records; for the Parish of Franklin, in Book "P," p. 206, et seq., of Notarial Record; for the Parish of Caldwell, in Book "K," page 573, et seq., of Notarial Records; for the Parish of Morehouse, Book "V," p. 86, et seq., of Notarial Record; for the Parish of Ouachita, in Book 39, p. 609, et seq., of Notarial Records; for the Parish of Catahoula, in Book "7," p. 348, et seq., Notarial Record.

This affidavit is made by affiant and attached to the foregoing agreement for the purpose of entitling said agreement to recordation in each of said parishes, in order to give notice to all who may consult the records in each of said parishes as to the title of said lands of each and all of the claims set up by affiant, and his copetitioners in said suit, which is here referred for fuller information to all whom it may concern.

J. W. BROWN.

Sworn to and subscribed before me this the 19th day of May, 1903.

R. J. BLACK,
Notary Public.

Original filed in evidence December 2nd, 1903.

R. A. YOUNG, *Clerk.*

Indorsed: Filed Dec. 16, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

96 United States Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

To the Clerk of the United States Circuit Court, Western District of Louisiana:

You will please set down the demurrers filed to complainants bill for hearing to be had on Monday the 1st day of January, 1912,

it being the rule day in January, or to be heard as soon thereafter as practicable, and you will please set down the plea or pleas filed to complainants bill for hearing on its, or their, sufficiency, said hearing to be had on Monday the first day of January, 1912, it being the rule day in January, 1912, or as soon thereafter as practicable.

WALTER GUION,
Attorney General of Louisiana, Solicitor for Complainant.

Indorsed: No. 694. United States Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division. In Equity. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd. Motion to Set Down Demurrers and Pleas. Filed Dec. 29, 1911. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, folio 482.

United States District Court, Western District of Louisiana, at Monroe.

No. 694.

TENSAS BASIN LEVEE BOARD
vs.
TENSAS DELTA LAND CO.

It is hereby agreed by the complainant and the defendants that this cause shall be fixed for argument on the demurrer by the Court at any date which may suit the Court after the 20th day of
97 April, 1912, whether at term time or at chambers, and that if heard at chambers any judgment rendered by the Court shall have the same effect as a judgment entered at Monroe at term time.

WALTER GUION,
Attorney General of La., Solicitor for Complainant.
FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
Solicitors for the Defendants.

Indorsed: No. 694. United States District Court for the Western District of Louisiana. In Equity. Board of Levee Commissioners of Tensas Basin Levee District vs. Tensas Delta Land Co., Ltd. Agreement of Counsel to Set Demurrer for Hearing. Filed Apr. 10, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 3, folio 54.

United States Circuit Court, Western District of Louisiana, at Monroe.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

Comes now the plaintiff, by R. G. Pleasant, assistant attorney general of the State of Louisiana, its counsel, appearing in that behalf, and moves the Court to strike out defendant's answer in support of its demurrer for the reasons that no such answer is required or permitted by law; that it is an attempt to supplement said demurrer by bringing in other matters that should be embodied in pleas and answers in support thereof and in answers to the complaints.

R. G. PLEASANT,
Assistant Attorney General of La., Counsel for Plaintiff for the Purpose of This Motion.

Indorsed: No. 694. Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Ltd.
98 Motion to Strike Out Answer in Support of Demurrer. Filed Apl. 22, 1912. Leroy B. Gulotta, Clerk, U. S. Dist. Court, West. Dist. of La.

United States District Court for the Western District of Louisiana.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS
vs.
TENSAS DELTA LAND CO., LTD.

This cause came on to be heard at the Shreveport term, by agreement of parties, on the demurrers of the defendant, and was argued by counsel, whereupon, and on consideration thereof, it is ordered, adjudged and decreed that the demurrers of the defendant be sustained, the demands of the complainant be rejected, and the bill and amended bill of complaint be dismissed with costs.

It is further ordered, adjudged and decreed, that the application of the complainant to further amend its bill and amended bill tendered on Monday, May 6th, 1912, at Alexandria, the day fixed by the Court for the decision of this cause, be denied, and that said then tendered amendments be filed in the record to show what said tendered amendments are.

Thus done and signed in open court at Lake Charles, La., this 20th day of May, 1912.

ALECK BOARMAN, *Judge.*

Indorsed: No. 694. United States District Court for the Western District of Louisiana. Board of Levee Commissioners of Tensas Basin Levee District vs. Tensas Delta Land Co. Decree Dismissing Bill of Complaint. Recorded in Chancery Order Book, Vol. 3, folio —. Filed May 20, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

99 *Memorandum of Reasons for Judgment.*

United States District Court, Western District of Louisiana.

Number 694. In Equity.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
vs.
TENSAS DELTA LAND COMPANY, LTD.

The defendant filed a general and several special demurrers to the bill and amended bill filed by the complainants.

The sole object of the bill is to set aside for fraud a sale of lands made by the complainant to the defendant in November, 1898. The bill was not filed until nearly thirteen years had elapsed since the sale.

Two of the grounds of demurrer go to the merits of the bill, and if good, must result in dismissal, i. e,, laches, and the statute of limitations of ten years. The only way the complainant can escape the bar of the statute is to show that the fraud was not discovered, that it was concealed, and that due diligence was used to discover the fraud.

There is an unbroken line of jurisprudence in courts of equity setting forth the stringent requisites of a bill seeking such relief.

Stearns vs. Page, 7 How. at p. 829; Howe vs. Greene & Hawkins, 17 How. p. 69-72; Beaubieu vs. Beaubieu, 23 How. 190-208; Badger vs. Badger, 2 Wall. 94-5; Brown vs. County of Beuna Vista, 95 U. S. 157-160; Hayward vs. Eliot Nat. Bank, 96 U. S. 611-618; Wood vs. Carpenter, 101 U. S. 135-139. See also 139 U. S. 332, 146 U. S. 115-6, 149 U. S. 235-6-7, 152 U. S. 558, 92 Fed. 877, 55 Southern 772.

The doctrine of these cases has been approved by and applied by the Supreme Court of Louisiana, 55 Southern 772; 112 La. 103.

The original bill filed in the State court did not undertake to meet these difficulties of pleading. When the case was brought by removal to this Court, an amended bill was filed which attempted to state a case, but vaguely and indefinitely. It is to this original and to this amended bill that the demurrers were filed.

100 At the argument the complainant asked leave to amend, and the Court advised counsel to prepare and submit the amendments he proposed to file. These proposed amendments were submitted at Alexandria on the day fixed for the decision of the Court. The amendments were taken under advisement, and the decision of the case postponed to this day. These amendments are

presumed to be the best showing the complainant can make. The Court is of opinion that they do not improve the complainant's case, and that even with these proposed amendments, the bill does not comply with the rules laid down in the cases cited.

"Statutes of limitation are vital to the welfare of society, and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at the foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar. The bane and the antidote go together." Wood vs. Carpenter, 101 U. S. 139.

In the same case, the Court said:

"A party seeking to avoid the bar of the statute on account of fraud, must aver and show that he used due diligence to detect it, and if he had the means of discovery in his power, he will be held to have known it."

And again:

"In this class of cases, the plaintiff is held to stringent rules of pleading and evidence. And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentations *was* discovered, and what the discovery is, so that the Court may clearly see whether by ordinary diligence the discovery might have been before made."

And again:

"Concealment by mere silence is not enough. There must be some trick or contrivance intended to exclude suspicion and prevent inquiry."

101 Another rule given by the authorities for refusing to set aside the bar of the statute of limitation in cases of this kind is the fact that men are mortal and that parties and witnesses die, and it becomes impossible to prove or to clear up transactions without such witness.

The rule is particularly applicable to this case. It was stated in the argument, and admitted by the attorney general, and the facts thus stated and admitted are personally known to the Court that many of the persons connected with the transactions are dead, to-wit: R. E. Yancey, a member of the Levee Board; E. T. Lamkin, attorney of the Levee Board; Senator I. Davis, Ex-Congressman Chas. J. Boatner, Judge John S. Boatner, Judge Gray, and R. B. Blanks president of the Merchant's & Farmer's Bank of Monroe.

The bill complains that the lands were sold by the public board for a vile price. And yet in spite of this fact, which alone was sufficient to put the board on notice, there is no claim that any investigation was set on foot. It is claimed that no notice of this fraud was required by this board until October, 1909, nearly eleven years after the transaction was concluded. During all these years complainant stood silent and saw the defendants in possession of these lands,

treating them as their own, paying taxes thereon to the complainant, and selling them for large prices. No concealment is charged against the defendants. They are not averred to have practiced any tricks or devices to conceal the alleged fraud. In the proposed amendment it is charged that the information of the fraud and what the fraud was, was divulged to the board on October 13th, 1909, by an attorney who got the information from suits and records filed in the Courts at the domicile of the board itself, these suits being between the alleged conspirators themselves. The Board was charged with notice of these suits, and the smallest diligence would have disclosed to them what the attorney found.

It is clear to me that there is no case made on the original or amended bill, and that to allow the proffered amendments would not better the case as made in this bill and amended bill. The bill must therefore be dismissed. The proffered amendments will be filed and made part of the decree, in order that in case of appeal, the
102 appellate court may see why this Court has thus exercised the discretion given it by law to permit or to refuse a complainant the right to amend his bill.

ALECK BOARMAN, *Judge.*

Indorsed: No. 694. Equity. U. S. D. Court, W. D. of La. Board of Com. Tensas Basin Levee Dist. vs. Tensas Delta Land Co., Ltd. Memorandum of Reasons for Judgment. Filed May 20, 1912. Aleck Boarman, Judge. Filed May 20, 1912. Leroy B. Gulotta, Clerk U. S. District Court, Western Dist. of La.

In the Honorable United States District Court for the Western District (Fifth Circuit Formerly) of Louisiana, Monroe Division.

No. 694. In Equity. (Formerly Circuit Court Docket.)

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LTD.

To the Honorable the Judge of the United States District Court for the Western District of Louisiana, Monroe Division:

The Board of Levee Commissioners of the Tensas Basin Levee District, complainant herein, by leave of Court in that behalf first had and obtained, brings this, its amendment of its bill of complaint against said respondent, Tensas Delta Land Company, Limited.

And thereupon your orator complains and makes amendment of its said bill of complaint herein as follows:

First. Between the word "employees" and the word "whereby" in the eleventh (11th) line of paragraph fourteen (14) of said bill insert: "Hereafter to be named in paragraph twenty (20) of this complaint."

Second. Between the word "employees" and the word "who" in the twelfth (12th) line of paragraph eighteen (18) of said bill insert: "Hereafter to be named in paragraph twenty (20) of this complaint."

103 Third. After the last word in paragraph nineteen (19) of said bill add: "Hereafter to be named in paragraph twenty (20) of this complaint."

Fourth. In lieu of paragraph twenty (20) of the original bill, as it now reads, complainant amends same so as to read as follows, to-wit:

20.

Your orator avers that the said fraud and fraudulent practices consisted principally in the fact that the sum of twenty thousand dollars ($20,000.00) in cash, and eighteen thousand seven hundred and fifty dollars ($18,750.00) of the capital stock of the said Tensas Delta Land Company, Limited, was used by that company and its agents by being given to the hereinbelow mentioned members, officers, and agents of said Levee Board and to certain leading citizens of said district and of the State, and hereafter named, to influence, and which did influence, a sufficient number of the said members of said Board of Levee Commissioners of the Tensas Basin Levee District to vote in favor of said sale, which was, thereafter, made in the carrying out of said fraud and fraudulent scheme. Your orator avers that the amounts paid to said members of the said Board of Levee Commissioners by respondents and its agents and stockholders were as follows:

To John J. Parker, president of said Board of Levee Commissioners, three thousand dollars ($3,000.00) cash, and three thousand seven hundred and fifty dollars ($3,750.00) in stock of respondent company.

To J. A. Hemler, member of said Board of Levee Commissioners, five hundred dollars ($500.00), through J. W. Simms.

To R. E. Yancey, member of said Board of Levee Commissioners, five hundred dollars ($500.00) cash, through R. B. Blanks.

Your orator further avers that the amounts in money or capital stock of respondent company, or both, as hereinafter indicated, given to the said certain leading citizens for the purpose above mentioned are as follows:

To R. B. Blanks, who afterwards became president of said Board of Levee Commissioners, seven thousand, five hundred dollars ($7,500.00) cash, and stock amounting to three thousand, seven hundred and fifty dollars ($3,750.00).

104 To J. W. Simms, two thousand five hundred dollars ($2,500.00) cash, and stock amounting to three thousand, seven hundred and fifty dollars ($3,750.00).

To two (2) attorneys, for legal and promoting services, the sum of three thousand dollars in cash, and stock amounting to seven thousand, five hundred dollars ($7,500.00).

Your orator further avers that said amounts in money and stock were paid to said parties between the 7th day of November, and the

last day of November, of the year 1898, or thereabouts, at or near the City of Monroe, Louisiana.

Fifth. In lieu of paragraph thirty-one (31) of the original bill, as it now reads, complainant amends same so as to read as follows, to-wit:

31.

Now, your orator avers that it is entitled to recover from said Tensas Delta Land Company, Limited, the aforesaid amount of four hundred and eighty thousand, eight hundred and fifty-four and 50/100 dollars ($480,854.50), together with such additional amounts as may be shown on the trial of this cause to have been received as aforesaid by said company, less the sum of one hundred and thirty thousand dollars ($130,000.00), received by the predecessors of your orator as the price received by them as aforesaid for the entire body of lands fraudulently and illegally sold to said Tensas Delta Land Company, Limited. Your orator further avers that, though it does not condone the fraud practiced in the sale of said lands to the said Tensas Delta Land Company, Limited, it ratifies and confirms the aforesaid sale made by said company to those persons who were purchasers from said company subsequently, the said purchasers being innocent of said fraud. Your orator further offers to do all equity toward defendant that the Court may adjudge to be just in this cause, such as the return of all taxes, costs of transfers, the protection of said property, and other charges and expenses, and interest, as the Court may adjudge to be legally or equitably due. Your orator further avers that it is entitled to have the said illegal and fraudulent sales made by the said Board of Levee Commissioners of the Tensas Basin Levee District to said Tensas Delta Land Company, Limited, as aforesaid, on the 9th day of November,
105 1898, set aside and annulled as to the rest of the lands so fraudulently and illegally transferred to said company, and which have not been disposed of by it, and which orator understands and believes, and so avers, amount to about four hundred and thirty-two thousand, one hundred and nine and 95/100 acres (432,109.95), as will be fully shown by Exhibit P, already heretofore referred to as being annexed hereto as part hereof, as well as by Exhibits Q, R, S, T, U, V, W, X, and Y, hereto annexed for reference and greater certainty of description.

Sixth. In lieu of paragraph thirty-seven (37) of the original bill, as it now reads, complainant amends same so as to read as follows, to-wit:

37.

Your orator avers further that the Board of Levee Commissioners of the Tensas Basin Levee District who were the immediate predecessors of your orator and who, themselves, did not compose and constitute the membership of the Board of Levee Commissioners of said levee district at the time the aforesaid fraudulent sales, complained of herein and in the petition filed in this case in the Honorable the Sixth Judicial District Court of the State of Louisiana and Parish

of Ouachita, were made, was informed, for the first time, on the 13th day of October, 1909, or thereabouts, of the fraud that had been practised by said Tensas Delta Land Company, Limited, and its agents, and by certain of the members, officers, agents and employees of the Board of Levee Commissioners of the Tensas Basin Levee District, as hereinbefore shown, against that levee district in bringing about the said illegal and fraudulent sales made as aforesaid by said Board of Levee Commissioners of said levee district to said Tensas Delta Land Company, Limited, of all the said board's lands lying in said district.

Your orator further avers that its predecessors, except the aforesaid guilty members thereof, did not know, and could not reasonably have learned, of the aforesaid fraudulent practices, and that the said Board of Levee Commissioners of the Tensas Basin Levee District is not and was not guilty of any laches in not having discovered said fraud sooner; that the knowledge of the said fraudulent practices was locked up in the minds of those who com-
106 mitted the said fraud, and the said board had no way of discovering same; that the said culpable members of said board remained members thereof for several years, and R. B. Blanks also became a member thereof later, all of which naturally tended to prevent inquiry and the development of suspicion by the said board as such. There was also no means of knowledge possessed by the board; that the discovery of said fraud was made in the year 1909, and communicated to complainant, by George Wesley Smith, Esquire, a practicing attorney at law, of Rayville, La., who happened to make said discovery while engaged as counsel in other suits embracing the following matters asserted in said suits:

In 1897 and 1898 the Board of Levee Commissioners of the Tensas Basin Levee District quit-claimed on the account of invalid titles upon the advice of its counsel several thousand acres of land. The existence of these quit claims was well known in November, 1898, to the Tensas Delta Land Company, Limited, its stockholders, and its agents. Notwithstanding the existence of these quit-claim deeds and this knowledge on the part of the said land company, the said agents and attorneys for the said land company, in preparing the deeds from the said levee board to the said land company, purposely included a great deal of these lands which had been previously quit-claimed. Some of these lands were carried by the said land company for a period of ten years in its assessment for taxes all of the time, and some only a part of the time, and some not at all. In the fall of 1908 and spring of 1909 the said land company filed in the parish of Richland seven suits, the objects of which were to recover from the said quit-claim owners several thousand acres of these lands. The said land company in its petitions charged the Levee Board, which immediately preceded the one making the sale to the said land company, with all manner of fraud in executing the quit-claim deeds hereinabove mentioned, and also charged the said quit claim owners with all manner of fraud and conspiracy. The said George Wesley Smith, one of the attorneys for the defendants in the above mentioned suits, succeeded, after several months

of patent labor and diligent research, in ferreting out the facts contained in your orator's complaint, whereupon he immediately communicated same to your orator and to the Governor of the
107 State of Louisiana, and that the said State and your orator acted upon said information immediately. Your orator further avers that the said George Wesley Smith procured his said information from testimony adduced in the case of James W. Brown, et al., versus Tensas Delta Land Company, Limited, No. 5634 of the docket of the Sixth District Court, Parish of Ouachita, State of Louisiana, and in the case of Breard, et al., vs. Tensas Delta Land Company, Limited, et al., of the aforesaid docket and district, and in the case of R. Henderson Beard, Thomas C. Looney, Jacob Thompson, and W. J. Crawford, Complainants, versus Tensas Delta Land Company, Limited, the Michigan Trust Company, Trustee, James W. Brown, Thomas Hume, Gregory M. Luce, and Charles A. Luce, Executors of the Estate of Ransom C. Luce, Deceased, T. Stewart White, Thomas Friant, John C. Rugee, Joseph J. Tucker, Antoni G. Hodenpyl, James D. Lacey, Wood Beal, and Victor Thrane, Defendants, No. — of the docket of the Circuit Court for the County of Kent, State of Michigan, in Chancery. Your orator further avers that it knew nothing of the trial and record of said suits until knowledge thereof was communicated to it by the said George Wesley Smith. Your orator further avers that it gained and acquired additional strong proof of said fraud through the report of the State supervisor of public accounts, Hon. Archibald M. Smith. This report, in addition to the foregoing alleged facts, showed the payment of the moneys, hereinabove referred to, in such a way, and their deposit in the Merchants & Farmers Bank of Monroe, Louisiana in such a manner and at such a time as to lead conclusively to the guilt of the members of the Levee Board as hereinabove referred to and of R. B. Blanks and of J. W. Simms.

Your orator further avers that the said complainant Board, acting by and through the State of Louisiana, its parent's authority and now acting for itself, immediately, and without any laches whatever, instituted proceedings for the annullment of said fraudulent contracts of sale from the said Board to the said Tensas Delta Land Company, Limited. Your orator annexes herewith and makes a part hereof the suit of the State of Louisiana versus Tensas Delta Land Company, Limited, No. 3509 of the docket of the Seventh Judicial District Court of the State of Louisiana, Parish of Richland, and hereinafter referred to, together with the petition
108 of said respondent, The Tensas Delta Land Company, Limited, for the removal of said cause to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, Monroe, Division; that the said record and petition for removal were filed, in accordance with the act of Congress, in the said United States Circuit Court, which said record and petition, being No. — of said Court, but now transferred to this Honorable Court by law, is hereby annexed hereto and made a part of this suit by reference. Your orator avers that said petition for removal specifically alleges that the said suit was an "action, while prosecuted in the name of the

State of Louisiana, is prosecuted for the sole use and benefit of the Board of Levee Commissioners of the Tensas Basin Levee District," and that, "being so prosecuted, the State of Louisiana is a nominal party, and the real plaintiff in interest is the said Board of Levee Commissioners of the Tensas Basin Levee District; and your orator particularly shows and alleges that respondent cannot now deny that said suit was an action by, for, and on behalf of the said Board, and your orator avers, and respondent's said petition for removal shows, that complainant was not guilty of any laches whatever in the prosecution of its rights after its discovery of the aforesaid fraud committed against it. Your orator further avers that, when said Board of Levee Commissioners, the immediate predecessors of your orators, was informed of said frauds, it was advised that the State of Louisiana, acting upon the opinion and advice of her attorney general, Walter Guion, claimed the right to institute a suit for the setting aside of said sales on account of the fraud which had been practised, and for the recovery of the lands so illegally and fraudulently sold, and for that reason, and because of the institution by the State of Louisiana, through her said attorney general, of the suit hereinbefore and hereinafter referred to, and knowing that if said suit should terminate successfully for plaintiff, it meant the return of said property to the said Board of Levee Commissioners, your orator did not institute an independent and separate suit for the purpose of annulling and setting aside said sale, but gave to the State and her attorney general all the information which your orator possessed, and your orator diligently continued its quest for more evidence. Your orator further avers that it filed this suit as quickly as possible after the above mentioned suit, brought by the
109 State, had been dismissed by the Supreme Court of the State of Louisiana.

Wherefore, your orator prays, as it has before prayed, in its original bill of complaint; and that respondent may answer, but not under oath, such oath being hereby waived, according to the practice of this Court, all and singular the matters stated and charged in said original bill of complaint, and those hereinbefore stated and charged in your orator's amended bill of complaint.

WALTER GUION,
Attorney General;
R. G. PLEASANT,
Assistant Attorney General,
Solicitors for Complainant.

Affidavit.

On this — day of ——, 1911, before me personally appeared T. B. Gilbert, Jr., president of the Board of Levee Commissioners of the Tensas Basin Levee District, the above named complainant, who made solemn oath that he has read the foregoing amendment to the bill of complaint and amended bill of complaint and knows the contents thereof, and that the same is true of his own knowl-

edge, except as to matters therein stated on information and belief, and as to these matters he believes them to be true.

T. B. GILBERT, JR.

Sworn to and subscribed this 6th day of May, 1912.

F. C. COOK,
Deputy Clerk U. S. District Court, Western Dist. of La., Alexandria Div.

[SEAL.]

Indorsed: No. 694. United States District Court, Western District of Louisiana (Formerly Circuit Court). Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited. Amendment of Bill of Complaint. Filed (in accordance with decree of May 20, 1912) May 20, 1912. Leroy B. Gulotta, Clerk, U. S. Dist. Court, West. Dist. of La.

110 United States District Court for the Western District of Louisiana, Monroe Division.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

To the Honorable the Judge of the Said Court:

The petition of the Board of Levee Commissioners of The Tensas Basin Levee District, complainant in the above numbered and entitled cause, through its undersigned counsel, with respect represents:

That complainant conceives itself aggrieved by the judgment and decree made in the above entitled cause on the 20th day of May, 1912, and that it desires to appeal and does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which is filed herewith.

Wherefore, complainant prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals, at New Orleans, in the manner and at the time prescribed by law and by the practice of said Court; that citation issue to defendant, Tensas Delta Land Company, Limited, in the manner and form prescribed by law, and that petitioner be granted such further relief as may be proper in the premises.

R. G. PLEASANT,
Attorney General, State of Louisiana;
HARRY GAMBLE,
Assistant Attorney General,
Solicitors for Complainant.

Order.

The appeal and relief prayed for are allowed, upon the giving of a bond by petitioner, conditioned according to law, with good and sufficient surety, in the sum of one thousand dollars ($1,000.00), said appeal to be returnable to the United States Circuit
111 Court of Appeals for the Fifth Circuit according to law.

Signed in open court at Monroe, Louisiana, on this the 21 day of October, 1912.

ALECK BOARMAN, *Judge.*

Indorsed: No. 694. In Equity. United States District Court for the Western District of Louisiana, Monroe Division. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited. Petition for Appeal. Filed Oct. 21, 1912. Leroy B. Gulotta, Clerk U. S. District Court, West. — of Louisiana.

Assignment of Errors.

United States District Court for the Western District of Louisiana, Monroe Division.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LTD.

Comes now the Board of Levee Commissioners of The Tensas Basin Levee District, the complainant herein, by counsel, and files the following assignment of errors upon which it bases its cause of appeal from the decree and judgment rendered by this Honorable Court on the 20th day of May, 1912, in the above entitled cause, and upon which it relies for a reversal of said judgment and decree:

I.

That said Court erred in sustaining the first ground of demurrer interposed by defendant to the original and amended complaint in said cause, and by holding and decreeing that plaintiff had not made, by its bill, such a case as entitles it in a court of equity to any recovery or relief as therein set forth, and in failing to hold to the contrary.

112 II.

That the said Court erred in sustaining the second ground of the demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding and ad-

judging that the averments of conspiracy and fraud in said bill are so vague, general, incomplete and indefinite that the defendant could not be put upon its defense because of said averments and particularly because of the averments contained in paragraphs 14, 15, 16, 17, 18, 19 and 20 of said bill, and in refusing to hold the reverse.

III.

That the said Court erred in sustaining the third ground of the demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding that the said bill is without equity because the complainant does not offer to do equity in offering to return the purchase price of the lands sold, with interest, the taxes paid on the whole of said lands with interest, the necessary costs expended in preserving the said lands with interest, and the necessary costs of making sales of said lands with interest, and in failing to hold to the contrary.

IV.

That the said Court erred in sustaining the fourth ground of demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding that the said bill is without equity because the complainant sues to recover the gross amount of the sale price of certain lands with interest, and at the same time refuses to confirm and ratify said sale.

V.

That the said Court erred in sustaining the sixth ground of the demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding and adjudging that the demand of complainant to set aside said sale for fraud, or on any grounds, is barred, on the face of the bill,
113 by the prescription of ten years, and by not holding to the contrary.

VI.

That the said Court erred in sustaining the seventh ground of the demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding and adjudging that the averments of said bill, whereby the complainant makes allegations as the basis for the avoidance of the operation of the prescription of ten years, are sufficient in law or in equity to prevent the operation of said limitation, and in not holding to the contrary.

VII.

That the said Court erred in sustaining the eighth ground of the demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding and adjudg-

ing that the demand in the complaint, to set aside the sale of the lands involved, for fraud, is barred on the face of the bill by the prescription of one year, and in failing to hold the reverse.

VIII.

That the said Court erred in sustaining the ninth ground of the demurrer interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and by deciding and adjudging that the averments of complainant's bill whereby it lays the basis for the avoidance of the operation of the prescription of one year, are utterly insufficient in law or in equity to prevent the operation of said limitation, and that the Court further erred in holding that there is a law providing for said prescription of one year in this case.

IX.

That the said court erred in sustaining any of the foregoing grounds of demurrer, whatever, interposed by defendant to the original and amended complaint filed as aforesaid in said cause, and especially did the said court err in not allowing to be filed and
114 made a part of the original and amended complaint an amendment to said original and amended complaint and which cured, if such curing were needed, all of the said grounds of demurrer, and thus presented a complete right of action and cause under the equity rules and jurisprudence of the United States.

X.

That the said Court erred in holding that complainant was guilty of laches and that it did not show due diligence in the discovery of the fraud alleged in the complaint. Complainant avers that the original and amended complaint shows that the knowledge of said fraud was concealed in the minds of the parties who committed said fraud and that the complainant Board had no means, as a board, of knowing that said fraud had been committed; that it was communicated to said Board after the personnel thereof had changed, in the year 1909; that if these facts were not made plain sufficiently in the original and amended petition, they were made absolutely plain and sufficient in the proffered amendment to the original petition and amendment.

XI.

That the said Court erred in holding that the statute of limitations of ten years had run, notwithstanding the fact that the complainant Board had not learned of said fraud until the year 1909, when, according to complainant's allegations and belief, the said years began to run, and has not yet expired.

XII.

That the said Court erred in holding that the evidence of the said fraud was in easy reach of complainant.

XIII.

That the said Court erred in presuming that Judge John S. Boatner, Judge Gray, Senator I. Davis, and others not mentioned in the pleadings in this case, and who may be now dead, were in any way connected with the said transactions alleged to have been fraudulently made, or that they probably would have been witnesses in this case.

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XIV.

That the said Court erred in holding that complainant was guilty of laches even after the discovery of said fraud in 1909, the Court basing said ruling upon the ground that the complainant Board did not thereafter file its suit until some two years had elapsed. Complainants aver that the original and amended complaint shows that the State of Louisiana, on behalf of said Board, filed suit for the recovery of said property for said Board, immediately after the discovery of said fraud, and prosecuted said suit to a final judgment in the Supreme Court of the State of Louisiana; that the said Supreme Court held that the complainant Board should be the proper plaintiff, and not the State of Louisiana; that, immediately thereafter, the said Board filed the suit now before this Honorable Court. Complainant avers that, even if the said original and amended complaint were not sufficiently plain on this point, the proffered amendment to the original and amended complaint is absolutely plain and sufficient for the reason that it shows that it gave all proper aid to the State of Louisiana in its attempt to recover said property, and that defendant itself, in its petition to remove the said cause of the State of Louisiana versus the Tensas Delta Land Company, Limited, from the State Court to the Federal District Court, averred and acknowledged that the said original suit of the State of Louisiana versus Tensas Delta Land Company, Limited, was a suit for and on behalf of your complainant, the Board of Levee Commissioners of the Tensas Basin Levee District, and that it was, in effect, a suit by said Board.

XV.

That the Court erred in refusing to receive and file, as part of the bill of complaint in this cause, the proffered amendment to the original and amended bill of complaint.

XVI.

That the Court erred in receiving, filing and recognizing defendant's answer in support of its demurrer, the same not being allowed by law.

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XVII.

That the Court erred in sustaining the demurrer of defendant and dismissing complainant's bill.

Wherefore, complainant prays that the decree and judgment of the District Court be reversed, and that the District Court be ordered to receive and file, as part of the bill of complaint, the said proffered amendment to the original and amended bill of complaint, and that it be further ordered to proceed with the trial of said cause, according to law.

R. G. PLEASANT,
Attorney General of Louisiana;
HARRY GAMBLE,
Assistant Att'y Gen.,
Solicitors for Complainant.

Indorsed: No. 694. In Equity. United States District Court, Western District of Louisiana, Monroe Division. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited. Assignment of Errors. Filed Oct. 21, 1912. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana.

Bond for Appeal.

United States District Court for the Western District of Louisiana, Monroe Division.

No. 694. In Equity.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
versus
TENSAS DELTA LAND COMPANY, LIMITED.

Know all men by these presents, that we, the Board of Levee Commissioners of The Tensas Basin Levee District, as principal (and herein represented by T. B. Gilbert, Jr., its president), and The United States Fidelity and Guaranty Co., as surety, are held and firmly bound unto the Tensas Delta Land Company, Limited, in the full and just sum of one thousand dollars to be paid to the said Tensas Delta Land Company, Limited, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and adminis-
117 trators, jointly and severally by these presents.

Sealed with our seals and dated this the 21st day of October, 1912.

Whereas, lately at a session of the United States District Court in and for the Western District of Louisiana, Monroe Division, holding sessions in and for said district, and in the Lake Charles and Alexandria Divisions, by consent, in a suit pending in said Court between the Board of Levee Commissioners of The Tensas Basin Levee District and Tensas Delta Land Company, Limited, a final decree was rendered in the Lake Charles Division against the said Board of Levee Commissioners of The Tensas Basin Levee District,

and the said Board of Levee Commissioners of The Tensas Basin Levee District having obtained an order of appeal and filed a copy thereof in the clerk's office of the said Court to reverse the said final decree in the aforesaid suit, and a citation directed to the said Tensas Delta Land Company, Limited, citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans, Louisiana, within thirty (30) days from date hereof:

Now the condition of the above obligation is such that if the said Board of Levee Commissioners of The Tensas Basin Levee District shall prosecute its appeal to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

Sealed, signed and delivered in the presence of R. N. Slaton, and Harry Gamble.

BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT,
By T. B. GILBERT, JR.,
President of the Board.
UNITED STATES FIDELITY & GUARANTY COMPANY,
[SEAL.] By W. S. SMITH AND JOHN M. MUNHOLLAND,
Its Attorneys in Fact.

Approved.
ALECK BOARMAN, *Judge.*

118 Indorsed: No. 694. In Equity. United States District Court for the Western District of Louisiana, Monroe Division. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Limited. Bond for Appeal. Filed Oct. 22, 1912. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana.

Præcipe for Transcript of Appeal.

United States District Court for the Western District of Louisiana (Formerly the U. S. Circuit Court).

No. 694. In Equity.

BOARD OF COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT
VS.
TENSAS DELTA LAND COMPANY, LTD.

To Leroy B. Gulotta, Esq., Clerk, U. S. District Court, Western District of Louisiana:

In making up the transcript of appeal in the above entitled and numbered cause, you will please include therein the following, to-wit:

1. Petition, Order and Bond for Removal from 6th Judicial District, Parish of Ouachita.
2. Citation and Return of Service of Petition for Removal.
3. Transcript of Proceedings in 6th Judicial District, Parish of Ouachita, and Petition of Plaintiff.
4. Rule to Show Cause Why Pleadings in State Court Should Not be Reformed, and Return.
5. Appearance of Attorney General.
6. Agreement of Counsel as to Reforming Pleadings.
7. Stipulation as to Complaint Reforming Pleadings.
8. Order Allowing Amended Bill of Complaint.
9. Bill of Complaint and Amended Bill of Complaint and Waiver of Service.

119 10. Appearance of Farrar, Jones, Goldsborough & Goldberg.

11. Demurrer.
12. Answer in Support of Demurrer.
13. Exhibits (Three in Number, Filed Marked 13-14-15) Attached to Answer in Support of Demurrer.
14. Motion to Set Down Demurrer and Plea.
15. Agreement to Set Demurrer.
16. Motion to Strike Out Answer in Support of Demurrer.
17. Decree and Memorandum of reasons therefor.
18. Amendment of Bill of Complaint (Referred to in Decree) Allowed Filed for Review.
19. Petition for Appeal, Order, Bond.
20. Assignment of Errors.
21. Citation of Appeal, and Return.
22. Præcipe for Transcript.
23. Clerk's Certificate.

R. G. PLEASANT,
Attorney General of Louisiana;
HARRY GAMBLE,
As'st Att'y Gen'l;
FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
Att'ys Def'ts in Appeal.

Oct., 1912.

Indorsed: No. 694. In Equity. United States District Court. Western District of Louisiana. Board of Levee Commissioners of the Tensas Basin Levee District versus Tensas Delta Land Company, Ltd. Præcipe for Transcript. Filed Oct. 30, 1912. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana.

True copy.
Attest:
[SEAL.]

LEROY B. GULOTTA,
Clerk U. S. Dist. Court, West. Dist. of La.

120 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States District Court, Fifth Circuit, Western District of Louisiana.

Clerk's Office.

I, Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing 105 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had in the cause entitled Board of Levee Commissioners of The Tensas Basin Levee District versus Tensas Delta Land Company, Limited, No. 694, in Equity, on the Docket of the United States District Court, formerly United States Circuit Court for the Western District of Louisiana, made in accordance with the præcipe of solicitors for the appellant and appellee, filed on October 30th, 1912, in this office, a certified copy of said praecipe being included in the transcript.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 16- day of November, A. D. 1912.

[SEAL.] LEROY B. GULOTTA,
Clerk United States District Court,
Western District of Louisiana.

121 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2636.

THE UNITED STATES OF AMERICA ex rel. STATE OF LOUISIANA, Petitioner,
versus
HON. ALECK BOARMAN, Judge United States District Court, Western District of Louisiana, Respondent.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 9th day of December, A. D. 1915, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

Supreme Court of the United States, October Term 1915.

No. 667.

UNITED STATES OF AMERICA ex Rel THE STATE OF LOUISIANA, Petitioner,
versus
HON. ALECK BOARMAN, Judge United States District Court, Western District of Louisiana.

Stipulation.

The Supreme Court of the United States having issued, in this case, a writ of certiorari to the United States Circuit Court of Appeals, Fifth Circuit, it is hereby stipulated and agreed by counsel for petitioner, the State of Louisiana, and counsel for respondent in the above numbered and entitled cause, that the certified transcript of record filed with the application for certiorari by counsel for petitioner, shall be taken as a return to said writ.

It is further stipulated and agreed that the clerk of the
122 United States Supreme Court shall cause to be printed, at the cost of petitioner, and incorporated with the said transcript of record, as one record, the exhibit filed with said application, being transcript of record in the United States Circuit Court of Appeals for the Fifth Circuit, entitled Board of Commissioners of the Tensas Basin Levee District versus The Tensas Delta Land Company, Ltd., No. 2446, and which transcript will have to be considered by said U. S. Supreme Court in order to understand the issues presented by the application for certiorari.

(Signed) RUFFIN G. PLEASANT,
Attorney General of Louisiana, for Pet'r.

(Signed) EDGAR H. FARRAR,
For Respondent.

(Signed) DANIEL WENDLING,
Of Counsel.

I further certify that the above is a true and correct copy of said stipulation, and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, La., this 9th day of December, A. D. 1915.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

[SEAL.] FRANK H. MORTIMER,
Clerk of the United Circuit Court of Appeals for the Fifth Circuit.

123 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which The United States of America ex rel. The State of Louisiana is petitioner, and Hon. Aleck Boarman, Judge United States District Court, Western District of Louisiana, is respondent, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the
124 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

125 [Endorsed:] File No. 24,950. Supreme Court of the United States, October Term, 1915. No. 667. The United States ex rel. The State of Louisiana, Petitioner, vs. Hon. Aleck Boarman, Judge, etc. Writ of Certiorari. 2636. U. S. Circuit Court of Appeals. Filed Dec. 9, 1915. Frank H. Mortimer, Clerk.

126 [Endorsed:] 667. 24,950. No. 2636. United States Circuit Court of Appeals for the Fifth Circuit. United States of America ex rel. The State of Louisiana, Petitioner, vs. Hon. Aleck Boarman, Judge of United States District Court, Western District of Louisiana, Respondent. Writ of Certiorari, and return thereto.

127 [Endorsed:] File No. 24,950. Supreme Court U. S., October term, 1915. Term No. 667. The United States ex rel. The State of Louisiana, Petitioner, vs. Hon. Aleck Boarman, Judge, etc. Writ of certiorari and return. Filed December 11, 1915.

Office Supreme Court, U.
FILED
APR 30 1917
JAMES D. MAHER
CLER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 264

UNITED STATES OF AMERICA EX REL. THE STATE OF LOUISIANA,

Petitioner,

versus

HONORABLE ALECK BOARMAN, JUDGE UNITED STATES DISTRICT COURT OF LOUISIANA,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF PETITIONER.

A. V. COCO,
Attorney General.

HARRY GAMBLE,
Assistant Attorney General,
For Petitioner.

The L. Graham Co., Ltd., Printers, 430-32 Common St., New Orleans.

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3. In the alternative, the question is submitted whether the Attorney General, by delegated authority, is not the real plaintiff; whether he was entitled to appeal; and whether he did appeal.....37-40

4. The argument on both the foregoing questions condensed.....40-41

5. If neither the State nor the Attorney General was a party plaintiff, and entitled to appeal, then we declare that the State was a party in interest, if not of record, and that she had a right to intervene and appeal.....41-57

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CAPITAL DIVSIONS OF THE TRANSCRIPT.

Broadly speaking, the transcript may be divided as follolws:

I.

R. 1-17. THE PETITION FOR WRIT OF MANDAMUS AND CERTIORARI OF THE STATE OF LOUISIANA TO THE FIFTH FEDERAL CIRCUIT COURT, praying that the Judge of the Western District of Louisiana show cause why petitioner should not be allowed to file its intervention, and be granted **appeal** from a judgment rendered in the matter entitled BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT vs. DELTA LAND COMPANY, LIMITED, No. 694 of the docket of said Court, and praying, further, that an order be issued directing that an appeal be granted in this case from the decree of the said District Court on the 21st day of October, 1913, * * * wherein said decree ratified a compromise entered into between the said Board, by its President in person, and defendant in said suit. Exhibits attached R. 18-23.

II.

R. 23. Order to Judge of the Western District to show cause, as prayed for.

III.

R. 24-37. Answer of respondent Judge.

IV.

R. 38-88. The transcript of record in the case of BOARD OF LEVEE COMMISSIONERS OF THE TENSAS

BASIN LEVEE DISTRICT vs. TENSAS DELTA LAND COMPANY, LIMITED, being a **portion** only of the record of the whole case, beginning with the decree and opinion of the Circuit Court of Appeals on a former appeal to the Court in the same case, on a judgment dismissing the suit, in which it was decreed that the trial should go forward in the lower court. Instead of the trial going forward, the Board of Levee Commissioners of the Tensas Basin Levee District, acting by its President in person, without the approval of the Attorney General, compromised the case. This transcript, beginning with the decree aforesaid, contains all the documents leading up to and including the judgment of compromise, from which compromise, as stated, an attempt was made by the State of Louisiana, through the Attorney General, to appeal; which appeal was refused and the writ taken to the Fifth Circuit Court and there denied as above; which denial is before this Court for review.

V.

R. 88-90. Opinion of the Fifth Circuit Court in refusing the writ.

VI.

R. 91-182. ADDITIONAL transcript, making, probably, the entire record of the Board of Commissioners of the Tensas Basin Levee District vs. Delta Land Company, Limited, in the Western District, exclusive of that portion of said transcript already mentioned and above included, R. 38 to 90. See IV above.

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1. Grant of Swamp Lands to Louisiana. Act of Congress, 1850.
2. Creation by State of Levee Board. Act 59 of Legislature, Session of 1886.
3. Donation by State of Swamp Lands to Levee Board. Sec. 2, Act 77, of Legislative Session, 1888. See paragraph 3 of **Statement** herein.
4. Sale by Levee Board of Lands to defendant, in November, 1898. R. 119, par. 26; R. 137, par. 19.
5. STATE, by the Attorney General, brought suit in November, 1909, in State courts, to recover the lands, alleging fraud in the sale. Suit dismissed by Supreme Court of State for want of **primary** interest in STATE to bring suit. 126 La. Rep., p. 59, State vs. Tensas Delta Land Company. Decision handed down April 25, 1910. See par. 5, **Statement** herein.
6. Act 3 of Extraordinary Session of the General Assembly, passed August 19, 1910, authorizing Governor and Attorney General to act in litigation of the character initiated in State vs. Tensas Delta Land Company, above. See par. 7, **Statement** herein.
7. Direction of Governor to Attorney General to take charge of litigation of Tensas Delta Basin Levee Board against Tensas Delta Land Company, January 4, 1911. R. 102.
8. Suit filed, according to instructions of Governor, September, 1911, in Sixth District, State Court, in name

of Levee Board "and of the Attorney General of the State of Louisiana and by the authority of Act 3." R. 91-104.

9. Removed by defendant to Federal Court, Western District of Louisiana, September, 1911. R. 104-107.
10. Plaintiff ruled to recast pleadings October 9, 1911. R. 107-110.
11. Plaintiff recast pleadings and filed them November 2, 1911. R. 111-128.
12. Defendant demurred for want of equity, vagueness, etc., December 16, 1911. R. 129, filing with same an answer "in support of demurrers." R. 131-142, including: Exhibits, No. 13 (R. 142), No. 14 (R. 146), No. 15 (R. 152-161), being certain selected writings and documents passed between the Levee Board and its vendee, in 1898, and certain transactions between defendant companay and its agents, then and afterward.
13. Agreement between counsel, filed April 10, 1912, to argue demurrers at the convenience of the Court **after** April 20, 1912. R. 162.
14. Amendment of the Bill of Complaint tendered May 6, 1912. R. 163. See Decree. Refused, but ordered filed by Court for view of appellate Court. See Decree.
15. The amendment proposed. R. 166-171.
16. Judgment of District Court, after argument, dismissing suit of plaintiff May 20, 1912. R. 163. With reasons. R. 164-166.
17. This judgment appealed October 21, 1912. R. 172-173. Assignment of errors. R. 173-177. Bond, R. 177.

18. Judgment reversed, case remanded, amendments ordered filed, and case proceeded with, April 8, 1913. R. 40-41. See, also, opinion of Circuit Court on this decree, R. 41-50.
19. This mandate filed and defendant ordered to answer in twenty (20) days, May 3, 1913. R. 51.
20. Defendants applied for and obtained extension of time to answer till rule day, August, 1913. R. 52-54.
21. Instead of answering, defendant appeared July 19, 1913, and plead a compromise entered into by it with the Levee Board, acting through its President in person, on July 11, 1913, and moved that " * * * the complainant herein, **and R. G. Pleasant, Attorney General of the State of Louisiana,** attorney of record of said complainant," show cause why suit should not be dismissed. R. 54-55.
22. Copy of compromise proceedings. R. 56-59.
23. Rule issued July 19, 1913, to complainant "and to R. G. Pleasant, Attorney General, its counsel of record herein." R. 55.
24. Service made on Attorney General July 28, 1913. R. 60.
25. Service acknowledged by President Levee Board July 31, 1913. R. 60.
26. Answer to rule by Levee Board, appearing by its President in person, admitting compromise. Filed August 5, 1913. R. 61-62.
27. Answer of "R. G. Pleasant, Attorney General and attorney of record for complainant," protesting against the compromise and refusing his approval. Filed October 6, 1913. R. 62-63.
28. Court convened next after the issuance of the order

above at Monroe, on October 20, 1913. Statement of respondent, Judge Boardman. R. 25, par. IV. Case not taken up till next day. See same.

29. In absence of Attorney General, case "tried" on October 21, 1913, notes of evidence taken showing transaction of compromise. R. 64-69. Referring to authority of President of Board as given by Board on July 11, 1913, by resolutions as attached. (But the same not in transcript.) R. 64-69. Letter to Attorney General from Secretary of Board referring to said resolution July 19, 1913, "instructing" Attorney General to dismiss suit. R. 70. Receipt showing payment of $100,000.00 to Levee Board in compromise (R. 71) and **ratification** of President's action, adopted by Board October 9, 1913. R. 73.
30. Brief of defendant on motion to dismiss, presumably filed day of hearing. R. 74-86.
31. Judgment of District Court confirming compromise and dismissing suit (R. 86-87) October 21, 1913.
32. On April 6, 1914 (error in R. 5, par. VIII, where date is alleged as **1913**), the "petition of the State of Louisiana, appearing through her Attorney General, Ruffin G. Pleasant," and setting up that she was aggrieved by this judgment, prayed to intervene and appeal from the judgment. R. 5-10; R. 27, par. VIII.
33. This application was refused. R. 27, par. IX.
34. The application to Court of Appeals of Fifth Circuit by the State of Louisiana, by her Attorney General, for writ commanding the District Judge to allow an intervention and appeal, allowing the

latter to take its usual course, or for alternative relief, an appeal to be granted by the Circuit Court of Appeal, and a review of the judgment of the District Court. R. 1-17. Filed April 19, 1914.

35. Order to show cause made, as prayed for, April 18, 1914. R. 23.
36. Answer of respondent Judge, October 5, 1914. R. 24-38.
37. Case submitted to Circuit Court of Appeals October 5, 1914. R. 88.
38. Writ denied, October 29, 1914. R. 88-89.
39. Order of Supreme Court of the United States directing that the foregoing record be sent to it—to review the proceedings and the judgment of the Circuit Court of Appeal. R. 182.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 264

UNITED STATES OF AMERICA EX REL. THE STATE OF LOUISIANA,

Petitioner,

versus

HONORABLE ALECK BOARMAN, JUDGE UNITED STATES DISTRICT COURT OF LOUISIANA,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF PETITIONER.

This case is here for review of a judgment of the Fifth Circuit Court, wherein that Court refused petitioner's application to order the Court of the Western District of Louisiana to permit petitioner to intervene and appeal from a judgment of that Court in a cause before it entitled BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT VERSUS TENSAS DELTA LAND COMPANY, LIMITED.

In the opinion of the Fifth Circuit Court, handed down October 29, 1914 (R. 88), the writ was denied for the reasons:

> "1. Under the decision of the Supreme Court of the State of Louisiana, rendered in State versus Tensas Delta Land Co., Ltd., 126 La. 59, the Supreme Court of the State, on full consideration, decided that the State was without real or beneficial interest in the lands in controversy, and this decision is controlling in this court."
>
> "2. One who is not a party to record and judgment is not entitled to an appeal therefrom," citing authorities.

STATEMENT OF THE CASE.

A fair statement will be best arrived at in this case by narrative.

1. In 1850, the United States granted hundreds of thousands of acres of low, or swamp, lands to the State of Louisiana, to be used for internal improvement. The mention of this fact is sufficient, the terms of the grant not being material here.

2. The State, at various times thereafter, created subordinate agencies in different parts of the State to dispose of these lands to the best advantage to accomplish the purpose of the donation. The most important, if not the only, purpose to which these lands and the funds derived from their sale were devoted, was to build levees along the principal streams of the State to prevent the overflow of flood waters into adjacent country, which was very fertile, largely cultivated, and heavily taxed for the same purpose.

These agencies were called Levee Boards, and they controlled and directed the levee improvements within certain specified limits called Levee Districts, each Board being composed of members to the number of parishes (counties) within the district, one member being appointed by the Governor from each parish, generally for a term of four years. The system here generally referred to was authorized by the Constitution, Article 214 of 1879, and amendment of this Article by Act 112 of 1884, adopted by the people; and Article 244 of the Constitutions of 1898-1913, and Acts of the Legislature of the State, in all of which the duty, authority and obligations of the Levee Boards were fully set out.

3. THE TENSAS BASIN LEVEE DISTRICT was created by Act No. 59 of 1886. Section 1 of that Act, amended by Act 77 of 1888, set out the limits of the district, including five parishes (counties) and parts of two others, and authorized the levy of heavy property and acreage taxes by the Levee Board.

Section 9 of Act 59 of 1886 was amended by Section 2 of Act 77 of 1888 as follows:

> "Be it further enacted, etc., That Section Nine (9) of said Act No. 59 of the Acts of 1886 be amended and re-enacted so as to read as follows:
>
> "That, for the purpose of raising additional funds for said district, the said Board of Levee Commissioners shall have the power, and it is hereby authorized, to levy an annual contribution or assessment upon all lands in said district subject to taxation for levee purposes, not to exceed five (5) cents per acre; said contribution or assessment shall be assessed and collected and paid into the State Treasury to the credit of the Tensas Basin Levee District, in the same

manner and at the same time as the other taxes herein provided for are assessed, collected and paid.

"**That, in order to provide additional means** to carry out the purposes of this Act, and to furnish resources to enable said Board to assist in developing, establishing and completing, either within or without the State, a system of levees and other works of public improvement, designed to aid in protecting property in the Tensas Basin Levee District from disastrous floods, **all lands now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Tensas Basin Levee District** as herein constituted, shall be, and the same **hereby are given, granted, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas Basin Levee District,** whether said lands or parts of the lands originally granted by the Congress of the United States to this State, or whether said lands have been, or may hereafter be, forfeited to, or bought in by or for, or sold to the State, at tax sales for non-payment of taxes; where the State has, or may hereafter become the owner of lands, by or through tax sales, conveyances thereof, shall be made only to said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, that any and all former owners of lands which have been forfeited to purchasers by, or sold to the State for non-payment of taxes, may at any time within the six months next ensuing after the date of the passage of this Act, redeem said lands, or any of them, upon payment to the Treasurer of the State all taxes, interest, costs and penalties due thereon down to the date of such redemption, but such redemptions shall be deemed and be taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Tensas Basin Levee District. After the expiration of the said six months, it shall be the duty of the Auditor and

the Register of the State Land Office, on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the President thereof; and thereafter said President of said Board shall cause said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein said lands are or may be located, **and when said conveyances are so recorded the title to said lands, with the possession thereof, shall, from thenceforth, vest absolutely in said Board of Levee Commissioners, its successors or grantees**; said lands shall be exempted from taxation after being conveyed to and while they remain in the possesison or under the control of said Board. **Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands** in such manner and at such times and for such prices as to said Board shall seem proper, but all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Tensas Basin Levee District, and shall be drawn out only upon the warrants of the President of said Board, properly attested, as provided in this Act."

4. In 1898, under authority granted by the foregoing legislative Acts, the Levee Board, as we allege, sold 885,040.31 acres of land lying in the district to the Tensas Delta Land Company, defendant, for $130,000; $30,000 cash, balance in three years, or at 14½ cents per acre. (R. 119-20-21, pars. 26, 27, 28. As admitted by defendant, 580,000 acres were purchased. R. 137, par. 21.

5. In 1909, the Attorney General of Louisiana, alleging gross fraud in this transaction, brought suit in the name of the State of Louisiana, in the State Courts, to recover the lands thus fraudulently conveyed, **and have them adjudicated to the State of Louisiana.** This case was decided by the highest tribunal of the State in the **126 La. Rep., p. 59,** in **State vs. Tensas Delta Land Co.** It is this case which is quoted by the Circuit Court as authority that the State of Louisiana has no interest in the lands alleged to have been fraudulently sold to the Tensas Basin Land Company. We shall have something to say in argument with regard to this case and the interpretation placed upon it by the Circuit Court. Suffice it to say now that the Court dismissed the suit of the State for its **then** want of interest, but plainly suggested to the State authorities that the State had one of two courses in respect to the subject-matter of the suit—to-wit, that suit to set aside the fraud could be brought by the Levee Board, or, if it should fail, **then** the suit might be brought by the State. This decision was handed down and the case finally disposed of on April 25, 1910.

6. On the heels of this decision, at an Extraordinary Session of the Legislature, in the call for which each object must be specially designated (Article 75, Constitution of Louisiana, 1913), the following Act was passed on August 19, 1910:

"ACT No. 3.

"Senate Bill No. 4.

"An Act

"Making it the duty of the Attorney General of the State, when requested to do so by the Governor, to

represent the State or any political agency or subdivision thereof, in any suit involving title to any land or real property, belonging to the State or any political agency or subdivision thereof, whether the title to said land or real property is vested in the State or in any political agency or subdivision thereof.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it is hereby made the duty of the Attorney General of the State, upon the request of the Governor, to represent the State or any political agency or subdivision thereof, in any suit in any court involving title to any land or real property belonging to the State of Louisiana or any of its political agencies or subdivisions, whether the title to said land or real property is vested in or appears in the name of the State or in the name of any of its political agencies or subdivisions."

It is this Act which, we will argue, is intended to, and does, obviously remedy the defect pointed out by the Supreme Court in the case above referrerd to, **State vs. Tensas Delta Land Company,** wherein it is said that neither the State nor Attorney General had any co-ordinate authority with the Levee Board to bring suits in its behalf.

7. R. 102. In accordance with this authority, J. Y. Sanders, Governor, addressed the Attorney General as follows:

"Baton Rouge, 4th January, 1911.

"Hon. Walter Guion, Atty. General, New Orleans, La.

"Dear Sir—By virtue of the law which confers upon me the authority and power to direct you as Attorney General to bring suits for the recovery of lands belonging to any subordinate subdivision of the State, I do hereby direct and request that you do

bring suit for the purpose of recovering the lands sold by the Tensas Basin Levee Board to the Tensas Delta Land Company, and for the recovery of a portion of which a suit was brought by the State of Louisiana against the Tensas Delta Land Company in the District Court for the Parish of Richland, and which suit was held by the Supreme Court of the State of Louisiana to have been improperly brought by the State. You will understand that I desire you to institute suit for the use and benefit and in the name of the Tensas Basin Levee Board.

"Respectfully yours,

"J. Y. SANDERS, Governor."

8. R. 91-104. On the 5th day of September of 1911, in accordance with the Act 3 of the Extra Session and the above authority, suit was filed in the Sixth District Court of the State of Louisiana, sitting in and for the Parish of Ouachita, by the Levee Board, appearing by authority of a resolution of the Board under date of the 14th day of July, 1910, directing the institution of this suit, and (quoting from the petition):

"**Which is also brought by the Attorney General of the State of Louisiana, who appears herein for said Board of Levee Commissioners under and by virtue of the written authority and instruction of the Governor of the State of Louisiana, dated the 4th day of January, 1911, issued under the authority of Act No. 3 of the Acts of the General Assembly of the State of Louisiana, enacted at the Extra Session thereof, approved Aguust 19, 1910** (Black letter ours), directing him to appear herein and to represent said Board of Levee Commissioners of the Tensas Basin Levee District, in the prosecution of this suit * * *." See pp. 91-92 of record.

9. This suit was against the Tensas Delta Land Company, Ltd., and after setting up the duties of the Board, and that 900,000 acres were transferred to the Board for the purpose of enabling it to carry out the business, or principal business, for which it existed (R. 94), and setting up, further, that the Board would have the right to dispose of those lands, it is said that it was intended that, whenever the Board of Levee Commissioners parted with said lands, "it would sell the same for an honest price, and for the best interest and advantage of the inhabitants" of the said Tensas Basin Levee District, whose representative it was. It is further alleged that, in September, 1898 (R. 95), "a fraudulent and collusive scheme was entered into" by and between the agents and members of the Land Company on the one hand, and certain members of the Levee Board on the other, whereby "all of the lands owned by and situated in said District and under the control of said District, should be sold and delivered for a nominal consideration, and at a price far less than the actual value of said property, to a company or corporation to be thereafter organized," and which was organized and became the Tensas Basin Delta Land Company, and to which was sold, for $130,000, more than 800,000 acres of land, then worth $500,000, now worth $4,321,099.50, and for which the company had actually offered to the Levee Board $200,000; averring, further, **that $20,000 in cash, and $18,750 in stock of the Tensas Delta Land Company, Ltd., was given to certain members, officers and agents of the Levee Board, which influenced them to vote in favor of the sale.**

It is further claimed in this suit that the Tensas Delta Land Company, since its fraudulent and illegal acquisition

of the lands, had sold a small portion of them, for which it obtained $480,854.50. And these plaintiffs pray that a judgment be had rescinding the sale, and recognizing the Levee Board to be the owner of said lands yet unsold by the company, and, further, for a judgment for $480,854.50 for the price of land sold by the company. R. 101.

It was alternatively prayed that, if it were held that the sale was not induced and consummated in fraud, that it be held as a donation, or, still further, alternatively, that the sale be rescinded for lesion. R. 101.

By the defendant, the case was removed, September, 1911, to the Federal District Court for the Western District of Louisiana, equity side (R. 104-107); and the pleadings of plaintiff ordered, October 9, 1911, to be recast to conform to equity practice (R. 107-110). The bill, as recast, was filed on November 2, 1911 (R. 111-128). The suit is brought by the Levee Board, **and** "by the Attorney General of the State of Louisiana, who appears (herein) for the purpose of representing your orator," as per legislative authority, Act 3, 1910, and Executive direction, all set out. (R. 111-112, par. 1). The bill is practically the same as the suit filed in the Sixth District State Court referred to above.

10. The defendants demurrred that the bill did not disclose a cause in equity; that the averments of conspiracy and fraud in said bill were so vague, general, incomplete and indefinite that defendants could not be put on their defense; that petitioner had not offered to return the purchase price of the money paid to it, and for other causes. R. 129, filed December 16, 1911.

On the same day, it filed, along with said demurrers, an answer "in support" of same. Admitting some things

and denying others, it denied that the State had transferrred to the Levee Board 800,000 acres, but admitted (R. 138) that, after all deductions were made for duplicates in description, bad titles, etc., that it received 580,000 acres. It denied knowledge of any fraud used in inducing and consummating the sale.

11. On May 6, 1912, at the Alexandria term of court, the Attorney General undertook to amend the bill to meet the objections of defendant, which was refused by the Court (R. 163); and the District Court sustained the demurrrers of the defendant and dismissed the bill. The amended bill, permission to file which was refused, was ordered to be included in the record on appeal from the judgment dismissing the suit. This bill averred (R. 167) that the $20,0000 cash used by the defendant to corrupt the members of the Board, and the $18,750 of the capital stock of the Tensas Delta Land Company, Ltd., later issued for the same purpose, was divided as follows:

> "To John J. Parker, President of said Board of Levee Commissioners, $3,000 cash and $3,750 in stock of respondent company."
>
> "To J. A. Hemler, member of said Board of Levee Commmissioners, $500 through ————————."
>
> "To R. E. Yancey, member of said Board of Levee Commissioners, $500 cash, through J. W. Sims."

It was alleged that certain other persons there named received the specific sums indicated for their influence with members of the Levee Board.

It was further set up that the information respectitng this fraud was not received by any one authorized to prosecute this suit until the 13th day of October, 1909, because the guilty persons had remained on the Levee

Board, and because, in any event, the facts were well concaled. R. 168, par. 37.

It is further asserted that the true facts in regard to this corrupt transaction only came out by accident through some litigation had in the fall of 1908 and the spring of 1909 between the Tensas Delta Land Company, Ltd., and other persons in the Parish of Richland, lying within the limits of the Levee District. R. 169, par. 37.

It is averrred that the facts on which these allegations were made were procured "from testimony adduced in the cases of" a number of persons sued by the Tensas Delta Land Company and from the investigations made by the Supervisor of Public Accounts of the State of Louisiana, made upon the direction of the Governor. R. 170, par. 37.

12. The judgment of the Western District Court dismissing the petitioner's complaint was appealed to the Fifth Circuit Court, and there reversed (See Circuit Judge Shelby's opinion, R. 51), it being held, among other things (R. 49), **204 Fed. 745**:

> "A defendant who has commmitted a fraud involving the corruption of persons occupying places of trust should not be permitted to profit by it on account of the negligence of the plaintiff, unless the facts of the case and the rules of equity inexorably require it."

And again, R. 50:

> "Where it is possible to avoid it, the Court should never allow justice to be defeated and wrong to triumph by mere mistake or unskilfulness in pleading."

The case was remanded to the Western District Court, "with directions to allow the amendments offered, to

overrule the demurrrers and to allow the defendant twenty days in which to answer and to proceed with the cause in accordance with the law and rules in equity." Mandate filed and recorded in Western District Court, May 3, 1913.

13. The defendant petitioned for an extension of time to answer, and on the 12th day of May, 1913, the District Court granted until August, 1913, to answer. R. 52-54.

On or about July 19, 1913, instead of coming in with an answer, the defendants filed a motion to dismiss the suit on the ground that the same had been compromised for $100,000 paid to the Levee Board on the 11th day of July, 1913, all acccording to acts and documents attached. On their suggestion, and in their language (R. 55), "it [was] is ordered by the Court that the Board of Commissioners of the Tensas Basin Levee District, complainant herein, **and R. G. Pleasant, Attorney General of the State of Louisiana, attorney of record of said complainant** (Black letter ours), do show cause on a day to be named by the Court why this cause should not be dismissed at the cost of the complainant." Motion signed by counsel for defendants.

14. Whereupon, the District Judge issued the following order:

> "It is ordered that the complainant, the Board of Commissioners of the Tensas Basin Levee District, and R. G. Pleasant, Attorney General, **its counsel of record herein** (black letter ours), do show cause on the first day of the next term of this Court, to be holden at Monroe, La., why this case should not be dismissed at the complainant's costs; and it is further ordered that, until this motion can be heard, all further proceedings in this cause be stayed and the defendant be dispensed from any obligation to file any answer

herein to the complainant's bill and supplemental and amended bill."

Signed July 19, 1913. R. 55.

15. The Board of Levee Commissioners of the Tensas Basin Levee District, appearing through its President, T. G. Gilbert, Sr., **in his own person,** filed an admission that the compromise had been entered into, money paid, and all was satisfactory, etc. R. 61.

16. On the 6th day of October, 1913, R. G. Pleasant, Attorney General, filed the following pleading (R. 62):

"United States District Court, Western District of Louisiana, Monroe Division.

No. 694.

"Board of Commissioners of the Tensas Basin Levee District

vs.

Tensas Delta Land Company, Ltd.

"Now comes R. G. Pleasant, Attorney General of the State of Louisiana, and the attorney of complainant in the above numbered and entitled suit, and, in answer to the order of the Court to show cause why this suit should not be dismissed and further proceedings stayed because of an alleged agreement entered into between the complainant and the defendant herein, avers that said agreement should not be recognized, nor this suit dismissed for the following reasons:

"First, the said suit is based upon a fraudulent sale of nearly 900,000 acres of land belonging to the complainant, and the said fraud vitiates the contract of sale.

"Second, a fraudulent sale of public lands cannot be ratified and approved by a subsequent agreement

between the vendor and the vendee. Only a new, legal and honorable sale, for an adequate consideration, can operate a transfer of said property. The ratification of a fraud is no more legally binding than the perpetration of the original fraud itself, and no government, governmental agency or subdivision, or court, can justify the one nor condone the other. This results not only from the positive expressions of the law, not only because it is **contra bonos mores** and against public policy, but also because it is inherently one of the fundmental objects of government to prevent and punish fraud, and especially fraud against the sovereign. Government and fraud are basically antagonistic. Either fraud must be condemned and government upheld, or fraud upheld and government abandoned.

"The motion to dismiss this suit states that the differences between the parties thereto have been settled and compromised by the payment of $100,000 by defendant to complainant. The only point in dispute was the question of fraud, all others having been abandoned during the progress of the case, as shown in the judgment of this Honorable Circuit Court of Appeals and by admission of complainant's counsel in open court. The question compromised, therefore was that of fraud, and nothing else, and the Court should not favor wrong instead of right by dismissing a suit of which it has full and complete jurisdiction.

"Third, the complainant should not be permitted to use the Court and its processes for the purpose of condoning and compromising fraud for money.

"Fourth, the Attorney General cannot dismiss this suit without express authority from the Governor of the State of Louisiana so to do, for the reason that his right to represent complainant herein and prosecute this suit was conferred upon him by the Governor under the provisions of Act No. 3 of the Extra Session of the General Assembly for the year 1910, and said

right has never been withdrawn; that the Attorney General is not answerable to the complainant for his management of this suit; nor is he bound to dismiss same at the request of said complainant; that the effect of said Act of the Legislature is to place the Governor in supreme charge of this and similar suits in the event he chooses to proceed under the Act in any particular suit; that the Attorney General is directly responsible to him, and to him alone; that it was the intention of the Legislature, in passing the statute above cited, to give to the Governor, and, through him, to the Attorney General, the control of suits of this character, and, on account of this control, prevent the compromise of the public's rights and interests, such as the Board of Commissioners of the Tensas Basin Levee District has attempted to do in the present instance; that the complainant cannot compromise this suit, nor the Court dismiss it, without the Governor's consent in any event.

"Wherefore, respondent prays that defendant's motion to dismiss be denied, that the agreement upon which it is based be disregarded, that the defendant be ordered to file its answer to the complainant immediately, and that the trial of this case on the merits be proceeded with without delay.

"Further prays for all necessary orders anad general and equitable relief.

"R. G. PLEASANT,

"Attorney General, State of Louisiana, and Attorney of Record for Complainant."

17. On the 21st day of October, 1913, the District Judge entered a judgment overruling the Attorney General's protest and sustaining the compromise (R. 86). See further references under par. 30 of Detailed Index to Transcript.

18. On April 6, 1914, the Attorney General filed a

petition of appeal, the first and last paragraphs and the prayer reading as follows (R. 5-7):

> "The petition of the State of Louisiana, herein appearing through her Attorney General, Ruffin G. Pleasant, duly authorized so to do by Section 131 of the Revised Statutes of the State of Louisiana and Act No. 3 of the General Assembly of said State for the year 1910, Extra Session, which laws are made part hereof by reference, respectfully represents."
>
> "9. Now, your petitioner alleges that she has been aggrieved by the said judgment and decree to the extent of at least four million, six hundred and eighty thousand, eight hundred and fifty-four dollars and fifty cents ($4,680,854.50), as shown above, and that she desires to intervene in this cause and appeal same, and does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified herein, and in the assignment of errors, which is filed herewith.
>
> "Wherefore, complainant prays that this intervention and appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were made, and all other records in the cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, in the manner and at the time prescribed by the law and by the practice of said Court; that citation issue to the Board of Commissioners of the Tensas Basin Levee District and to the Tensas Delta Land Company, Limited, in the manner and form prescribed by law, and that petitioner be granted such other and further relief as may be proper in the premises."

It was alleged in said application for intervention and appeal (par. 3, R. 6):

"That it manifestly appears, therefore, and petitioner so alleges, that the State of Louisiana is the parent authority over, and creator of the Tensas Basin Levee District, and the Board of Commissioners thereof; that the said lands were donated by the State to the Tensas Basin Levee District, as a trustee of said lands, with the requirement that they should be administered honorably, prudently, and without fraud; that the proceeds from the sale of same should be properly used in the building and maintenance of a large portion of the levee system of the State; that the compromise of any pecuniary interest of said Levee Board affects the State's entire levee system, necessitates the levying of more taxes, and the expenditure of more revenue, to the extent of the amount lost by such compromise; and that a fraudulent sale of public lands by a Levee Board, and the perpetuation of that fraud by a succeeding Board, as in the instance shown herein, is a violation of the law, the public policy, the good morals and the conscience of said State, and of the United States, is not countenanced by the sovereign, and is **ultra vires** in every respect, and should not be upheld, permitted or acquiesced in by any Court seized of jurisdiction."

And that the suit was instituted under Act No. 3 of the Extra Session of the General Assembly of the State of Louisiana for the year 1910, see par. 4. See, also, par. 5, as follows:

"That, pursuant to said instructions, the Attorney General, representing the said Board, brought suit, as shown in the above numbered and entitled cause, to recover the said money and lands; that it was the intent and purpose of said instructions that the Attorney General should prosecute the suit to a final determination for the purpose of establishing before

the Courts the frauds committed against said Board, and the State of Louisiana, and charged in said bill of complaint, and no authority was given to the said Board of Commissioners, the Governor, the Attorney General, or any one else, to compromise said cause."

The District Judge refused the application thus made. R. 27, par. IX.

18. The State made application to the United States Circuit Court of Appeals for a review of the judgment dismissing the suit (R. 1-17). The District Judge was ordered to show cause why the writ should not issue, and made return thereon. R. 24-37.

18. Upon a hearing in the Fifth United States District Court of Appeals on the issues presented, as hereinbefore set forth, it refused the writ, as first stated, on the following grounds:

"1. Under the decision of the Supreme Court of the State of Louisiana, reported in **State vs. Tensas Delta Land Co., Ltd., 126 La., p. 59**, the Supreme Court of the State, on full consideration, decided that the State was without real or beneficial interest in the lands in controversy, and this decision is controlling in this court.

"2. One who is not a party to a record and judgment is not entitled to an appeal therefrom," citing:

Bayard vs. Lombard, 9 Howard, 530.
Indiana vs. Liverpool & London & Globe Ins. Co., 109 U. S. 168.
Ex Parte Cockroft, 104 U. S., p. 578.
Ex Parte in the matter of Leaf Tobacco Board of Trade of the City of New York, Petitioner, 222 U. S., pp. 578-581.

Upon the foregoing state of facts, Attorney General Ruffin G. Pleasant, filed the petition in this Honorable

Court, October 11, 1915, praying that the judgment of the United States Circuit Court of Appeals be reviewed and reversed, "and judgment entered that the State of Louisiana was [is] entitled to prosecute an appeal from the said judgment of the District Court, sustaining the compromise," and "for such further and other orders in the premises as the nature of the case may require," and so on. See petitioner's application to this Court, pp. 20-21.

ARGUMENT.

I.

The primary question is:

1. Was and is the State of Louisiana, in fact or in legal purview, by and through her Attorney General, an actual party to the suit, and plaintiff or co-plaintiff of record?

2. If so, did she, in fact or in legal purview, by and through her Attorney General, legally and sufficiently apply for an appeal?

If these two questions may be answered in the affirmative, then her prayer here may be answered, the lower Courts reversed, and the appeal ordered to be filed and granted.

We have fully stated all the facts and referred to all the pleadings and statutes necessary to be considered to answer these questions; but we will, at the expense of some repetition, assemble here those facts, pleadings and statutes which **directly** answer the questions.

1. Act 59 of the Session of 1886, creating the Tensas Basin Levee Board, authorized that Board, among other things, to sue and be sued, as follows:

"Sec. 3. That said Commissioners shall constitute a Board of Levee Commissioners and shall be styled the 'Board of Levee Commissioners of the Tensas Basin Levee District,' and they shall be and they are hereby constituted and created into a body politic with corporate powers; **they shall have the power to sue and shall be sued in their corporate name**, and shall have a seal, and shall have the power to do and perform all the purposes of this Act; * * *."

2. In the case brought by the State against the Tensas Land Company, **126 La., p. 59, supra,** quoted by the Circuit Court as authority for saying that the State has no interest to appeal this case, it was held, Syllabus 2:

"That the Board of Commissioners could sue to annul an alleged fraudulent sale of such lands by the members of the Board and other district officers, and it not appearing that the Board had failed or was unwilling to sue, **and no co-ordinate power being given the Board or Attorney General to sue respecting such lands, a suit for such purpose in the name of the State was unauthorized.**" (Black letter ours.)

In this opinion, holding that the State had no interest to bring the suit, in which the Chief Justice and an Associate Justice dissented, out of a court of five, on an application for rehearing it was also held:

"The General Assembly **has the power at any time to authorize the Attorney General to institute actions for the use and benefit of the taxpayers and people of any particular levee district.** But, as the General Assembly has vested the power to sue and be sued in the Board of Commissioners of the Tensas Levee District, and has vested no such co-ordinate power in the Governor or Attorney General, we are of the opinion

that the institution of this suit in the name of the State is unauthorized."

It has been held in the original opinion, p. 72, that:

"Again, it is true that, if the governing body of one of these corporations fails in its duty to bring a suit, which clearly it ought to bring, the Court may (only, however, in highly exceptional circumstances) allow any citizen or taxpayer of the district to bring a suit; and, in such a case, the same privilege might, for the same reason, be extended to the State; but nothing of that kind is pretended in this case. * * *"

3. The foregoing opinion was handed down and became final on April 25, 1910.

4. At the Extraordinary Session of the Legislature called shortly after this opinion was rendered, Act No. 3 was passed, August 19, 1910, as follows:

"AN ACT

"Making it the duty of the Attorney General of the State, when requested to do so by the Governor, to represent the State or any political agency or subdivision thereof, in any suit involving title to any land or real property, belonging to the State or any political agency or subdivision thereof, whether the title to said lands or real property is vested in the State or in any political agency or subdivision thereof.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it is hereby made the duty of the Attorney General of the State, upon the request of the Governor, to represent the State or any political agency or subdivision thereof, in any suit in any court involving title to any land or real property

belonging to the State of Louisiana or any of its political agencies or subdivisions, whether the title to said land or real property is vested in or appears in the name of the State or in the name of any of its political agencies or subdivisions."

5. And later, the Governor wrote the following letter:

"Baton Rouge, 4th January, 1911.

"Hon. Walter Guion, Atty. General, New Orleans, La.

"Dear Sir—By virtue of the law which confers upon me the authority and power to direct you, as Attorney General, to bring suits for the recovery of lands belonging to any subordinate subdivision of the State, I do hereby direct and request that you do bring suit for the purpose of recovering the lands sold by the Tensas Basin Levee Board to the Tensas Delta Land Company, and for the recovery of a portion of which a suit was brought by the State of Louisiana against the Tensas Delta Land Company in the District Court for the Parish of Richland, and which suit was held by the Supreme Court of the State of Louisiana to have been improperly brought by the State. You will understand that I desire you to institute suit for the use and benefit and in the name of the Tensas Basin Levee Board.

"Respectfully yours,

"J. Y. SANDERS, Governor."

6. In accordance with the authority thus conferrred upon the Attorney General, he brought the suit referred to in par. 9 of the **Statement**, in the Sixth District Court of the State of Louisiana; the Levee Board appeared by authority of a resolution of the Board, under date of the 14th day of July, 1910, directing the institution of the suit, and (quoting from the petition):

> "**Which is also brought by the Attorney General of the State of Louisiana, who appears herein for said Board of Levee Commissioners under and by virtue of the written authority and instruction of the Governor of the State of Louisiana, dated the 4th day of January, 1911, issued upon the authority of Act No. 3 of the Acts of the General Assembly of the State of Louisiana, enacted at the Extra Session thereof, approved August 19, 1910** (black letter ours), directing him to appear herein and to represent said Board of Levee Commissioners of the Tensas Basin Levee District in the prosecution of this suit * * *."

As recast, when removed to the Federal Court, the caption was in substance the same. The suit is brought by the Levee Board, and "by the Attorney General of the State of Louisiana, who appears [herein] for the purpose of representing your orator," as per legislative authority and Executive direction, citing Act 3. See par. 10 **Statement.**

It was prayed that the fraudulent sale be rescinded and the land be reconveyed to the Levee Board.

7. After a long time, and many further legal proceedings, the Levee Board, acting through its President in person, notwithstanding that the Legislature had provided, through the Governor, that the Board could, as we interpret it, act only through the Attorney General, or, rather, had no authority to act at all, compromised the case with the defendant. Whereupon, defendant moved to have the compromise recognized, and ruled the Attorney General and the Levee Board to come into court and show why the case should not be dismissed. The language of the defendant in its motion (R. 55, par. 14 of statement) being:

"It [was] is ordered by the Court that the Board of Commissioners of the Tensas Basin Levee District, complainant herein, **and R. G. Pleasant, Attorney General of the State of Louisiana, attorney of record of said complainant** (black letter ours), do show cause on a day to be named by the Court why this cause should not be dismissed at the cost of the complainant."

And the Court ordered:

"That the complainant, the Board of Commissioners of the Tensas Basin Levee District, **and R. G. Pleasant, Attorney General** (black letter ours), its counsel of record here," show cause, etc.

8. In response to this order, the Atotrney General made return (See par. 17 of **Statement**), and in the fourth paragraph of his said return, after showing in the other three paragraphs that the suit should not, in his opinion, be dismissed, declared:

"Fourth, the Attorney General cannot dismiss this suit without express authority from the Governor of the State of Louisiana so to do, for the reason that his right to represent complainant herein and prosecute this suit was conferrred upon him by the Governor under the provisions of Act No. 3 of the Extra Session of the General Assembly for the year 1910, and said right has never been withdrawn; that the Attorney General is not answerable to the complainant for his management of this suit; nor is he bound to dismiss same at the request of said complainant; that the effect of said Act of the Legislature is to place the Governor in supreme charge of this and similar suits in the event he chooses to proceed under the Act in any particular suit; that the Attorney Gen-

> eral is directly responsible to him, and to him alone; that it was the intention of the Legislature, in passing the statute above cited, to give to the Governor, and, through him, to the Attorney General, the control of suits of this character, and, on account of this control, to prevent the compromise of the public's rights and interest, such as the Board of Commissioners of the Tensas Basin Levee District has attempted to do in the present instance; that the complainant cannot compromise this suit, nor the Court dismiss it, without the Governor's consent in any event,"

which was signed "R. G. Pleasant, Attorney General, State of Louisiana and Attorney of Record for Complainant."

From all of the foregoing, it is plain, to the extent of demonstration, that the State of Louisiana, through her appointed agent her Attorney General, had assumed charge of and brought the suit against defendant. The association of the Levee Board in the suit as the plaintiff, and giving its name as a title to the suit, were superfluities which should neither obscure the real facts nor displace the real plaintiff.

> "Where all the promises and contracts are set out in the pleadings, if any one of them will authorize judgment, the Court should render it. Irrelevant or useless matter does not vitiate the good."
> **19 La. Rep., p. 207.**

The prayer that the title to the land be reconveyed to the Levee Board did not make that Board the sole plaintiff, nor, we think, even a co-plaintiff, but was a direct compliance with what practically amounted to a sugges-

tion from the Supreme Court of Louisiana in **State vs. Tensas Delta Land Company, supra**; and, further, with the requirement of Act 3 of the Extra Session of 1910 and the letter of the Governor requiring the State's attorney to sue for the benefit of the Board.

Is it not clear that not only is the State a real party to the suit, and by her appointed agent actually of record, but that she has, by the Act 3 and the ensuing action of the Governor and her attorney, assumed sole and complete charge of the litigation—to the entire exclusion of the Levee Board? Does it not appear conclusively that the Levee Board was not only unable to compromise this case without the approval, and against the protest of the State's specially appointed agent, but was even deprived, if the Attorney General so chose, of the right to demand to be consulted in the management of the litigation?

The State of Louisiana declared, by Act 3, that, by the direction of the Governor, its attorney should take charge of suits like this—thus modifying, if not impliedly revoking, the authority in the Act giving authority to the Levee Board to sue and be sued, Section 3 of Act 59 of 1886, above quoted. Was there anything **personal** in the nature of the authority with which the State thus clothed its legal agent? Certainly not. The State was acting in the only way that a State can act—by her appointed agents—in a legal manner, by the agent provided by the Constitution, and especially named by her in her statute No. 3—to-wit, the Attorney General. In this matter, then (in such suits as these), whose authority did the Attorney General embody? Not the Levee Board's. By the very Act of taking the control of the litigation away from the Levee Board and placing it in the hands of her own at-

torney, the State substituted one of her agents for another—one in whom she had confidence, for one in whom she had lost confidence. The fact that the State directed the substituted agent to so handle the litigation that the Courts might finally adjudge the lands back to the Levee Board; or, in other words, to bring the suit for the use and benefit of the Levee Board, in no way admits that the Levee Board was, or is, plaintiff, and the State a third person; but, on the contrary, establishes the fact that the State is the real plaintiff and the Levee Board the third person, for whose use and benefit the suit is brought; and that the Attorney General is in control of the case.

> "When a party brings suit for the use of another, the party bringing the suit has the legal right to control the suit, * * *."
>
> **18 La. A., p. 483, Moore & Browder vs. Bres.**

In compliance with the direction of the State, and especially reciting the authority she clothed him with, the "suit * * * was brought by the Attorney General of Louisiana"; "appearing for the Board," it is true, not as its representative, however (except in the proper sense of being substituted for it), but as the embodiment of the State, acting itself in the interest of the Board—no longer trusted. It might have been a little better and clearer pleading, perhaps, had the learned predecessor of our predecessor plead that he was "appearing for the State in the interest of the Levee Board"; but we submit that where he recited his authority—to-wit, Act 3—he, in substance, accomplished the same purpose and effect.

"Mere mistake or unskilfulness in pleading," if such

these were, should no more be permitted to blot out the true meaning of the pleading, if such true meaning may be ascertained from the context and the references therein contained, than they should, according to Judge Shelby, "allow justice to be defeated and wrong triumph." The caption of the petition shows that, at best, the Levee Board was a co-appearer, and not the sole appearer. The petition was signed by the Board's own attorney, allowed to it by law since the time of its creation.

It is confusion of thought to say that the Attorney General appeared only as, and with the authority of, counsel for the Levee Board, because his action was directed to its ultimate interest. This becomes plain when it is recalled that, at first, by Section 3 of Act 59 of 1886, quoted above, the Levee Board was authorized to "sue and be sued"—that is, to litigate for its interest, in its own name, by its own attorney and officers. So doing it was the agent of the State, the sole agent, with whom no one, without the authority of the State, could interfere; but, nevertheless, still a State agency.

Fisher vs. Auditor, 39 An., p. 452.
State vs. Tensas Delta Land Co., 126 La. Rep., p. 59.
Little vs. Williams, 231 U. S., p. 335.

The reason none could interfere with the Levee Board was becauase the State had confided its whole authority, for the time being, to such agent. Any attempt at interference by any one in the name of the State, was ineffectual, not because the State could not interfere, but because it had not interfered—that is, it had authorized no one to act for it in the matter, except the Levee Board. We say that, **at first**, the Levee Board had this exclusive authority to act, and to act in its own name, for its in-

terest; but the State, in Statute No. 3 of 1910, took away this authority, in this and similar litigation, and reposed it, under the conditions, in the Attorney General. It was the Attorney General, and not the Levee Board, who is authorized to litigate this case. The fact that the Executive instructed the Attorney General to bring a suit in the name of the Levee Board is unimportant; the law authorizing the Governor to act was controlling, and therein the State directed its attorney to bring the suit for the benefit of the Board, and not the Board to bring the suit for its own benefit by the assistance of the State's counsel.

We affirm that the literal and necessary meaning of Act 3 is that, when directed by the Executive, the State's attorney shall "represent"—stand in the place of, take the place of, assume the authority heretofore granted to—the Levee Board, and thereby become the State's trusted agent in the matter, instead of the Levee Board, as theretofore.

That to "represent" another means something other and different than merely appearing as a counselor, solicitor, legal adviser, or attorney to conduct the litigation, subject to the control of the person "represented," is very clear from the following:

> 1. "The curators of persons, interdicted, or absent, act judicially in the name of those they **represent,** in the same manner as tutors of minors."
>
> **Art. 109, Garland's Revised Code of Practice, third edition.**
>
> 2. "The curators of vacant successions, or of absent heirs, may bring all kinds of actions relating to their administration in their own name and in their

quality, without being obliged to mention the name of the heirs they **represent**, because it is often uncertain whether such heirs exist, and their names are generally unknown."

Article 111, Ibid.

3. "If the minor, against whom one intends to institute a suit, has no tutor, the plaintitff must demand that a curator **ad hoc** be named to defend the suit. The same course must be pursued if the person intended to be sued be absent and not **represented** in the State."

Art. 116, Ibid.

See numerous citations of authorities under this Article.

4. See, also, Act 190 of 1904, p. 424.

5. "In a suit for the partition of immovables, the heirs themselves must be cited, and absent or minor heirs must be **represented** by a curator **ad hoc.** The attorney for absent heirs cannot represent the absentees in a proceeding for partition."

Gibbs vs. Executor, 47 An., p. 766.

"Plaintiff died pending an appeal by defendant; the latter moved to appoint the father of the plaintiff's minor heirs curator **ad hoc** to **represent** them in the suit."

Heirs vs. Kemp, 49 An., p. 1650.

"Special curator appointed to **represent** the. interdict."

See **Sallier vs. Rosteet, 108 La,. p. 378.**

6. "An absentee is a person who has resided in the State, and has departed without leaving any one ot **represent** him."

Par. 3, Article 3556, Revised Civil Code of Louisina.

The only authority the Levee Board ever had to appear on its own behalf was by Section 3 of the Act of 1886 above, repealed, or at least modified, by Act 3 of 1910, Extra Session, authorizing the Attorney General to appear in its stead. To interpret Act 3 as merely providing the Levee Board with an additional legal adviser is failing to give to the word "represent," in that Act, the meaning plainly intended, as appears from its meaning in the legal literature of Louisiana, the history of the legislation, and the fact that the Board already had an attorney.

There is an essential difference in the Attorney General acting for the Board **in a legal capacity,** in its name, for its interest; and acting for the State, as a duly selected agent of the State for that purpose, not only in a legal capacity, but with all the authority that the State itself had theretofore granted to the Levee Board. In the first case, it is the Board which is the controlling factor, naming its counselor and directing his activities—heeding his advice or not, as in the judgment of its administrative officers seemed fit. In the latter case, the State has confided to the Attorney General the right to fully control and manage the matter, according to both his legal and administrative judgment.

Hence, we say it is legally incorrect to hold that the Attorney General was in this litigation as the agent of the Levee Board; we assert that he is in this litigation as the agent of the State, substituted for the Levee Board; that he "represented" the Levee Board in this sense; that, in this litigation, the authority formerly had by the Board, so far as it would have concerned this litigation, was transferrerd to him.

He was so treated by the defendant and by the Court when he was ruled to answer and show cause why the compromise should not be sustained and the suit dismissed. Both the defendant and the Court thought it necessary to, and they did, treat the Attorney General of the State of Louisiana as an appearer, or a plaintiff, who must be disposed of and satisfied, legally, before the case could be dismissed.

They did not rule the complainant Levee Board, alone, to answer; but ruled the Levee Board, **and** R. G. Pleasant, Attorney General of Louisiana, to answer.

In his answer to the rule, the Attorney General, like the Judge and the defendant, regarded himself as distinct from the Levee Board; but, further, unlike them, he regarded himself as independent of its control. See the fourth paragraph of his answer to this rule, wherein he says, among other things, that he is "not answerable to complainant for his management of this suit; not bound to dismiss it at the request of * * * complainant"; also, "that it was the intention of the Legislature, in passing the statute above recited [referring to Statute 3 of the Extraordinary Session of 1910] to give to the Governor, and, through him, the Attorney General, the control of suits of this character, and, on account of this control, prevent the compromise of the public's rights and interest, such as the Board of Levee Commissioners has attempted to do in this instance." See copy of return above; also R. 63, par. 4.

If, then, the Attorney General does not derive his authority from the Board, and, instead of being its mere counselor, has its former authority transferrred to him by the direction of the State, then, indeed, it follows that within the limits of that authority, his acts are the acts

of the State—his principal—and he speaks for the State.

We conclude, then, that the State was, and is, through her Attorney General, not only an actual party to the record in this case, but the only party.

Under this conception, that the Attorney General of Louisiana was acting throughout as the agent of the State, to manage this litigation, instead of the Board, there is no question but what, protesting the compromise, he had a right, on behalf of his principal, to appeal the judgment of the District Court dismissing the suit.

The next question is, did he apppeal, or, rather, sufficiently attempt to appeal?

Before we examine the procedure adopted, let us consider the legal situation at the stage when the suit was dismissed by the District Court.

We have already argued that the State of Louisiana is the real plaintiff in this litigation.

1. If the Levee Board was the real plaintiff, and the Attorney General merely its solicitor or counsel, and "representing" it in such sense only, then we admit that the compromise was final, unless the State of Louisiana, as a third party, not of record, could intervene and appeal.

2. If, however, the Attorney General had been placed in charge of the litigation, by the State, to "represent" the Levee Board in the sense that he had been substituted for the Levee Board and clothed with the authority of the State formerly had by the Levee Board; then the State was the real plaintiff, and the compromise was not final, and the Attorney General could contest it.

3. If the State was the real plaintiff, it was by the special authority of Act 3 of the Extraordinary Session of 1910, in effect revoking the authority of the Levee Board, since, before that, it had been held in **State vs.**

Tensas Delta Land Co., supra, that the State had not authorized any one to appear for it in such a case except the Levee Board.

4. If the State [illegible]ne real plaintiff, acting by her Attorney General, it was a mere choice of form whether the protest against the compromise were made in his own name, in his official capacity as attorney for the State, or in the name of his principal, by and through him as its official and specially appointed agent.

5. For the same reason, also, it was unimportant whether he should appeal the case in his own name and official capacity, omitting reference to his principal, or in the name of his principal, by and through him in his official capacity.

As a matter of fact, R. G. Pleasant did protest the compromise, appearing (See par. 17, **Statement)** as attorney for the State and attorney for the Levee Board, specially setting up (par. 4 of the protest) that it was the intention of the Legislature (the State) to give the Attorney General the right to protect the public rights and interest.

As a matter of fact, the compromise being sustained, R. G. Pleasant, appearing as attorney for the State, citing his authority, Act 3, petitioned, in the name of his principal, for an appeal from the judgment. He set up that his principal was aggrieved financially to an amount exceeding four and one-half million dollars, and desired to apppeal for such reason, "and other reasons specified in the assignment of errors." R. 8-9-10.

So, then, in brief, what **was** done by the Attorney General was that he appealed this judgment in the name of his principal, by whose authority he had been acting through-

out, citing Act 3 as such authority, as he had cited it in the first suit in the State Court (R. 91-2), and the bill, as recast, in the Federal Court R. 111-112, par. 1).

The fact that R. G. Pleasant appeared at times as "Attorney General of the State of Louisiana," and as "Attorney General of the State of Louisiana and Attorney of Record for Complainant," or jointly with the "Board of Commissioners of the Tensas Basin Levee District," or "in the name of" such Board, is not controlling as to whom he, in fact, always appeared for. Such inaccuracies, if inaccuracies they were, were always controlled by the reference to Act 3, which made it plain who was the principal.

We say, therefore, that the State of Louisiana was the real plaintiff; that, as such, she legally and sufficiently petitioned to appeal, and the appeal should have been granted.

It follows that the assumption of the District and Circuit Courts, that the State was a third party, disregarded the fact that she was the actual and only plaintiff, and the decision that she was without interest to appeal was, therefore, erroneous.

If it be said that the State, through her officer, petitioned to **intervene** and appeal, and thereby stamped her character as a third party, desiring to become a party, then it is answered that the State had been, in fact, a party, or she had not. If she had been a party, her use of the word "intervene" in the pleading was surplusage, and she did, in fact, appeal; if she was not a party, it was time for her to hasten to become so, to restore public confidence, already too much shaken in public Boards. In any event, in the face of the apparent view of the District Court, that the State was not a party, it was but abundance of caution

in the pleader to not only petition to appeal, and to appeal, as he did, but also to petition to intervene. The Attorney General's desire was to see right done and wrong punished and detestable fraud brought to light for the welfare of government. In his anxiety regarding the right conduct of a matter so important, he was zealous to make every plea that resource and prudence could suggest. He may have made more than was sufficient, but certainly not less.

II.

If our conception of the legal character of this litigation, as above argued, is not accepted by the Court, and it is not admitted that the State of Louisiana is in legal purview the real plaintiff in this case, then we submit the question whether the Attorney General, by delegated authority, is not the real plaintiff; whether he was entitled to appeal; and whether he did appeal.

In this view we assert that the State, by Act 3 of the Extraordinary Session of 1910, withdrew the authority theretofore granted to the Levee Board by Section 3 of the Act of 1886, to sue in such cases as this, with all of the rights pertinent to the right to sue, and delegated it, through the Governor, to her Attorney General. The right of the State to withdraw the confidence and authority theretofore reposed in such a matter, or in any matter, in the Levee Board, and to lodge it elsewhere, is not, and cannot, be questioned.

Fisher vs. Auditor, 39 An., p. 452.
State vs. Tensas Delta Land Co., 126 La. Rep., p. 59, supra.
Little vs. Williams, 241 U. S., p. 333.

This suggestion, that the State, in authorizing the Governor to direct the Attorney General to represent the Levee Board in this and similar land litigation, meant to substitute the Attorney General, in such litigation, for the Board, instead of merely adding another to its legal staff, we have already argued, and, we think, established. We will only add here that, if the Court does not hold with us to that extent, yet it is simply impossible to escape the conclusion that the Legislature meant to give the Governor and the Attorney General more than a merely advisory influence in such litigation. The language of the Supreme Court of Louisiana, in **State vs. Tensas Delta Land Co., supra,** declaring that "the General Assembly has vested the power to sue and be sued in the Board of Commissioners of the Tensas Basin Levee District and has vested no such co-ordinate power in the Governor or Attorney General, * * *," followed on its very heels by the Extraordinary Session very shortly thereafter, passing Act No. 3, succeeded by the Governor's direction, and the Attorney General bringing this suit, all point unerringly and with irresistible force to the conclusion that the Legislature had done, and intended to do, something more than to provide an additional legal adviser to the Board—with advisory powers and influence only.

If the authority to conduct, control and make final disposition in this litigation was exclusively confided by the State to the Attorney General, or even only jointly confided to him, then it could not be compromised without his approval, and he would have a standing to appeal from the judgment. The question is, then, can it be said that the Attorney General has exercised, throughout, the authority thus delegated to him?

Whatever authority Act 3 gave, he invoked it and cited it for his action in the two petitions filed in the State and Federal District Courts, and in his petition for an appeal from the judgment rendered in the case. Therefore, that authority is controlling. If Act 3 delegated to him the power to bring and finally dispose of the litigation, and he declared that authority both in his petition for the recovery of the lands and his appeal from the decision in that case, any other declaration must be subordinate or surplusage. If he declared that he appealed by the authority of that Act, then certainly it could be only in the capacity delegated by it, and not in any other way, even though his pleading might be otherwise construed to mean that he was attempting to appear by some additional authority, or in some other capacity, or as representing, also, other persons and petitioners.

In short, since the only authority for the Attorney General to appear at any time in this case is found in Act 3, and he cited that authority in his petition bringing the suit, and in his petition appealing from the judgment in that suit, he must be considered as acting by that authority in each instance, and in the capacity therein set out. He could not divest himself of the character given him by the Act, if he would. It follows that, whatever mandate he was executing in bringing the suit, he was continuing to execute it in his appeal; that, whatever his capacity as a plaintiff, he still had it in his petition for appeal. In this view of the case, it is really little to the purpose to inquire strictly for whom he was acting, whether for the State always, as we have first argued, or for himself as executing a delegated trust, as we here suggest; provided he acted, and continued to act by the same authority. In

either event, if he had a trust imposed in him by Act 3 and the Governor's direction, he has never abandoned it from first to last, and has ever cited it as authority for his action.

Hence, we conclude, in the alternative, that it must be admitted that the Attorney General, under the delegated authority of Act 3, was the plaintiff in this suit, a party in interest, with the right to appeal; and that, in such capacity, he did attempt to appeal.

Therefore, it was error for the District and Circuit Courts to assume that the appearance in the appeal was for the State, as a third party, who had no interest; they should have held that he was a fiduciary in all instances, with interest to appeal.

III.

We can condense our whole argument under both subject sections I and II, above, as follows:

That where a public official derives his authority to appear and act from a statute, particularly a special statute, and does appear and act under such authority—in each case citing it—he must be held to have been appearing and acting in whatever capacity he thus acquired from that authority, in all such appearances and acts; notwithstanding he may have, in some or all of them, sought to appear in other or additional capacities.

That is to say, that the Attorney General, in this case, derived a character from Act 3, and, whatever that character was, he appeared in it when he brought the suit and when he sought to appeal; and, whatever the difference of opinion may be as to the nature and name of that character, it was present in bringing the suit and in appealing it.

And, since that character was of co-ordinate authority with the Levee Board, if not exclusive of the Levee Board, the compromise attempted to be made by the Leve Board is not its compromise, and the appeal should be allowed.

IV.

If neither the State nor the Attorney General was a party plaintiff, and entitled to appeal, then we declare that the State was a party in interest, if not of record, and that she had a right to intervene and appeal.

This argument will be made on the assumption that the Levee Board was sole plaintiff, and in making reference to that assumption under this heading there will be no qualifying expressions used.

Article 571 of Garland's Revised Code of Practice of Louisiana, 3rd Ed., reads:

> "The right of appeal is given, not only to those who were parties to the cause in which a judgment has been rendered against them, but also to third persons not parties to said suit, when such third persons allege that they have been aggrieved by the judgment."

Was the State entitled to prosecute an appeal from the judgment, as provided by this Article of the Code of Practice of the State of Louisiana, it having duly set up that it was an aggrieved and injured party?

The District Court and the Circuit Court, both, apparently decided this question from two standpoints. The Circuit Court said that, in the first place, as a matter of fact, the State of Louisiana had no interest, and cited **State vs. Tensas Delta Land Co., Ltd., 126 La., p. 59, supra;**

in the second place, that one who is not a party to the record is not entitled to appeal therefrom.

As respects the first proposition, if it be admitted that this remedy, granted by the State practice, will be allowed in the Federal Court, a proposition we will hereafter take up, the Circuit Court is in error in having considered whether there was a want of interest in the State. The Article of the Louisiana Code, and the practice in the Louisiana courts, in accordance with that Article, provides that the third party may obtain his appeal when he "alleges" that he has been aggrieved. The procedure in the Louisiana courts in such an instance is that the District Court grants the appeal thus applied for (provided the **allegations** show interest), without undertaking to try that question. The appeal is a matter of law and right, and does not lie in the discretion of the Judge. The question as to whether or not there is a grievance is determined by the appellate Court, **after the appeal has been granted and the record brought up.** In the State courts, in the practice under this Article, the parties to the judgment, if they oppose the appeal, do so, not in the District Court, but in the appellate court, generally by a motion to dismiss. In a case which we think has particular application here, **52 An., p. 1137, Mutual Fire Insurance Co. vs. Houchins,** the Court said:

> "This Court will not anticipate, on motion to dismiss, the issues which the appellant (a third person) proposes to submit to it. On the trial of the merits of the appeal, it may be that certain issues raised by the appellant cannot be adjudged from the record, or it may not appear that she has such an interest from the judgment rendered as authorizing her to appeal. If so, she will be the sufferer."

Admitting, we say, that the Federal Court will apply the remedy here granted by the State practice, we assert that the case at bar is one to which the decision of the Court above peculiarly applies. That is to say, the Circuit Court was not authorized in concluding that there may not have been a change in the state of facts or in the legislation of the State of Louisiana, since the decision in **State vs. Tensas Delta Land Co., 126 La., supra,** which **would give the State an interest in the lands in question.** We argue that the Circuit Court should have ordered the District Court to grant the appeal, under the terms of Article 571 of the Code of Practice, and then, upon the arrival of the record, to determine whether, in fact, the State had the interest alleged by it.

In the interest of expedition, and to avoid useless proceedings, we will admit that, if the decision of the Louisiana Supreme Court in **State vs. Tensas Delta Land Co.** had not been affected or modified by both subsequent facts, occurrences and legislation, which, **vel non,** could not be determined **before** the appeal was brought up, then the Circuit Court of Appeals might have been warranted in overlooking the fact that the District Court should have granted the appeal as a matter of right; because, in that instance, it would have been useless to order the District Court to grant the appeal, and then do that which the Court, having full information upon, could do without issuing such an order—to-wit, deny the alleged interest.

We assert that there **have been** occurrences and legislation, both, which affect the dictum of **State vs. Tensas Delta Land Co.** and that that dictum no longer applies to the interest of the State in this case. Indeed, by the very authority of that case itself, the State has acquired an

interest to prosecute this appeal. It was held in that case that, in the event of the failure of the Levee Board to prosecute the case (and we hold that to compromise it for a bagatelle is, in fact, a failure to prosecute), would authorize either the taxpayers of the Levee District, or the State, to bring such a suit as had been brought in that case. If, then, the State could have brought an independent suit, after the compromise by the Tensas Levee District, then it had an interest to appeal.

In referring to the interest of the State accruing after the decision in **State vs. Tensas Delta Land Co., supra,** we cite, also, Act 3 of the Extra Session of 1910, **supra,** but add nothing by way of argument to that already made. That argument demonstrates that, by Act 3, the State plainly intended to become, at the very least, a party in interest, if not a co-plaintiff.

But the application to intervene and appeal was not only tried and denied, by both the District and Circuit Courts without certainty that all facts necessary to determine interest were before them, but it was held that even if the State had interest she could not appeal, because she was not a party to the record.

We affirm that the remedy provided by the Louisiana Code of Practice, **supra,** may be applied by the Federal District Court sitting in equity—and that the appeal could have been, and ought to be granted.

In **National Surety Co. vs. Bank, 120 Fed. 593,** it was held that:

> "The Federal Court sitting in equity has jurisdiction in an appropriate case to enforce the new right and administer the new remedy created by these provisions of the Code of Nebraska. Rights created and

remedies provided by the statutes of the States, to be pursued in the State courts, may be enforced and administered in the national courts, either at law, in equity, or in admiralty, as the nature of the rights or remedies may require." (Citing many cases.)

To the same effect is **Foster's Federal Practice (4th Ed.), par. 7, page 15,** where the author says:

"Sec. 7. State Laws Creating New Rights are Enforced by Federal Courts at Law or Equity.—If, however, the customary or statute law of a State has created a new right, the Federal courts will enforce the same at law or equity, if it falls within the remedies authorized by either branch of their jurisdiction.

"Such are statutes * * * authorizing a suit to set aside the probate of a will, or a will itself **for fraud (Broderick's Will, 21 Wall. 503,** and other cases), even though the statute provides that the suit shall be brought in a specified State court. * * * A Federal court will folllow a State statute **(page 17)** 'authorizing an injunction to be granted in a new class of cases.' **(Cummings vs. National Bank, 101 U. S. 153, 157,** and other cases.) 'Federal courts of equity have followed statutes * * * creating and providing for the enforcement of a mechanic's lien. **(Davis vs. James, 2 Fed. 618.)**' That the summary method of foreclosing a mortgage under the Louisiana Code belongs on the equity side of the court **(Fleitas vs. Richardson, 147 U. S. 538),** and that the Louisiana statute authorizing a summary proceeding to set aside an incorrect assessment for taxation will be enforced pursuant to the chancery practice on the equity side of the Court. **(Lindsay vs. First National Bank, 156 U. S. 485.)**"

Same author, **page 20:**

> "When a State statute creates a new liability and provides that it can only be enforced in a specified tribunal, the Federal Courts will enforce the liability, and reject the clause respecting the exclusive jurisdiction. (**Davis vs. James, 2 Fed. 618.**)"

The doctrine announced in the foregoing cases and authorities is in keeping with the principle, so often announced, that, while State legislation cannot curtail equitable rights and remedies,

> "It must not be understood that the Federal courts of equity will not enforce new rights and remedies or new remedies for old rights created by State legislation, after it has acquired jurisdiction."
>
> **Simkins Suit in Equity (2nd Ed.), p. 17,**

the author stating, on **page 18,** thaf it has been frequently declared that

> "A party, by going into the national courts, does not lose any right or appropriate remedy of which he might have availed himself in the State courts in the same locality."

As long ago as 1880, in **Davis vs. James, 2 Fed. 618,** the Court held that the Court would enforce, in an equitable proceeding, rights created by State statute, the Court holding:

> "Decisions of the Supreme Court bearing upon the question seem clearly to determine that, even in a case where the right of action is originally derivable wholly from the State statute, which also designates the court in which such remedy may be enforced," the Federal Courts would follow same.

The Court, further on, says:

> "The question is one involving the right to pursue a remedy. * * * And if, in the case where a right of action, whether it pertains to persons or property, exists only in virtue of, and is solely derivable from, a statute of a State, that statute also declaring that the remedy to enforce such right shall be brought in a court of the State—if, I say, in such a case the remedy may be enforced in a court of the United States, as has been distinctly held, I am unable to perceive why, in a case like that in hand, the remedy may not also be pursued in the Federal court, notwithstanding the State statute."

United States Bank vs. Lyon County, 48 Federal Reporter, 632, was a suit pending on the equity docket, the bill having been filed to recover a decree or judgment against defendant for bonds bought by the bank, issued by defendant, and which defendant refused to pay. Upon demurrer to the bill, the Court found that the facts did not show a case for equitable relief, on the ground that complainant had an equitable remedy at law, and sustained the demurrer. Thereupon, complainant filed a motion in said cause asking that the cause be transferred from the equity to the law side of the United States Circuit Court, which motion was based upon the provisions of the statute laws of Iowa, and the Court granted the motion, thus enforcing the procedure of the State court of Iowa. In the course of the opinion, the Court says:

> "Why may not this Court follow this statutory enactment as a proper rule of action, when it find that a case, proper for an action at law, has been commenced in form of a suit in equity? * * * Why put the parties to the delay and expenses necessarily

> caused by a dismissal and recommencement of the proceedings, when the same can be saved by following the rule enacted in the State statute, and adopting the same as the proper practice in the Federal Court?"

And the Court sustained the motion and ordered the case transferred to the law side of the docket.

In **Cowley vs. Northern Pacific Railroad, 159 U. S. 569**, it is held (syllabus):

> "If a special proceeding under Washington Code, par. 436, to vacate a judgment for fraud, be removed to a Federal court, the petitioner loses no right that he would have had, had it not been removed."

The case shows that, originally, a proceeding was brought by the railroad against Cowley, the appellant, to recover possession of land. The case being at issue was referred to a referee to take testimony, and on the day set for the hearing the land agent of the railroad made an oral offer to appellant's attorney to compromise the case by paying $8,000 cash, the attorneys, by their contract with appellant, to receive one-quarter thereof. The attorneys advised the acceptance of same, but Cowley refused, notwithstanding which refusal the attorneys accepted the compromise. Cowley refused to ratify same, and employed other attorneys, but his original attorneys insisted upon the payment of their fee, and went on and receipted for the $8,000 paid by the compromise, which was turned over by the railroad to a bank.

Thereafter, the appellant instituted suit in the District Court of the Territory, and afterwards proceeded with it in the Superior Court of Spokane, State of Washington,

after admission as a State. It was then removed to the United States Circuif Court, which rendered a decree dismissing the bill. Subsequently it was taken to the United States Supreme Court. The following quotation from the opinion is pertinent to the question involved in this case:

> "The Court [United States Circuit] declined to consider it as a proceeding under the Code, saying that the rights of the parties and the limitations of their rights, in such a statutory proceeding, were quite different from the rights and limitations and the rules which must govern the decision **in a suit in equity**, and that the effect of a decision of judgment was entirely different."

Answering this conclusion of the lower Court, the Court says:

> "It would appear, however, in view of Section 440 of the Territorial Code, providing that the parties shall be brought into court in the same way, on the same notice as to time, mode of service, and mode of return, that the pleadings should be governed by the principles, and the issues made up in the form, and all the proceedings conducted, as in an original action by ordinary proceedings—that there was no impropriety in filing this petition or complaint as an original proceeding, or conducting the case in the ordinary method.
>
> " * * * In the case of **Gaines vs. Fuentes, 92 U. S. 10,** which was an action to annul an alleged will, brought under the laws of Louisiana, in the District Court of the Parish of Orleans, and removed to the Circuit Court of the United States, it was held that this suit was, in effect, an action between the parties, and that the Federal Court had jurisdiction. It was said that, if the suit could be maintained in a

State court, it might also be maintained by original process in a Federal court, where the requisite diversity of citizenship existed.

* * * * * * * *

"But while, after the removal of the case to the Circuit Court of the United States, it might properly be docketed and tried by the Court as an equity suit, it still remained, so far as the rights of the plaintiff were concerned, a special proceeding under the Territorial statute; and the powers of the Court in dealing with it were gauged, not merely by its general equity jurisdiction, but by the special authority vested in its own courts by the statutes of the Territory. Had the case never been removed to the Circuit Court, it would have proceeded in the State court as a special proceeding under the Territorial statute, and we are of opinion that, upon its removal to the Circuit Court, petitioner lost no right to which he would have been entitled had the case not been removed.

"**Even if it were treated as in form a bill in equity, the right of complainant would be gauged as well by the statute under which the bill was filed as by the general rules of equity jurisprudence.** If any action or proceeding in a State court were subject to be defeated or impaired by one of the parties exercising his statutory right to remove it to a Federal court, no one would be safe in instituting such a proceeding in any case wherein, by reason of diversity of citizenship or otherwise, it might be subject to removal. While the Federal Court may be compelled to deal with the case according to the forms and modes of proceeding of a court of equity, it remains in substance a proceeding under the statute, with the original rights of the parties unchanged.

"Although the statute of a State or Territory may not restrict or limit the equitable jurisdiction of the

> Federal Courts, it may establish new rights or privileges which the Federal Courts may enforce on their equity or admiralty side, precisely as they may enforce a new right of action given by statute upon their common law side."

The Court then cites several authorities in support of its conclusion, among them **Davis vs. Gray, 83 U. S. (16 Wall. 223, 231),** to the effect that:

> "A party by going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality. The wise policy of the Constitution gives him a choice of tribunals."(Citing other cases.)

These authorities show that courts of equity follow State statutes of procedure, and, it seems to us, sustain the right of the State of Louisiana to take an appeal from the judgment of dismissal rendered by the respondent Judge, and, in this respect, we submit that the State should not be concluded by the trial Judge's assertion that he exercised a discretion in the matter. The State statute makes no exception. It gives any one aggrieved a right to appeal from the judgment; and, as courts of equity grant relief in cases to prevent a multiplicity of suits, on the same principle ought the respondent Judge have granted an appeal, so that the State could appeal directly from the judgment rendered and not be subjected to the delay and expense of instituting a direct action.

As said in **U. S. Bank vs. Lyons, 48 Fed., supra:**

> "Why may not this Court follow this statutory enactment as a proper rule of action? * * * Why put the parties to the delay and expense necessarily

caused by a dismissal and recommencement of the proceeding, when the same can be saved by following the rule enacted in the State statute, and adopting the same as the proper practice in the Federal court?''

And the principle announced in **Cowley vs. Railroad, supra,** that:.

> ''If any action or proceeding in a State court were subject to be defeated or impaired by one of the parties exercising his statutory right to remove it to a Federal court, no one would be safe in instituting such a proceeding in a case * * * subject to removal.''

This is a wise and salutary rule.

The respondent's brief contains authorities to the effect that one who is not a party to the record and judgment may not appeal from a judgment rendered therein. We frankly confess the existence of such authorities in cases presenting wholly different facts than in the instant case, and, while the cases do not show it, we believe the said authorities to be good law in those States, perhaps, where there is an absence of the statutory procedure provided for by the Code of Practice of Louisiana, Article 571, and which Article, we contend, this Court should enforce in the instant case, since it was removed from a State court.

In **West vs. Smith, 101 U. S. (11 Otto) 263,** it was held (syllabus):

> ''Where a cause is removed from a State court to the United States Circuit Court, the latter Court may allow such amendments to be made to the declaration as would be allowable by the State practice.''

All these authorities show that the United States Courts follow the State practice, when no injustice is done, and when justice may be done.

We have not been able to find a case in the books like this. In the first place, the bill charged fraud, which vitiates everything. The Levee Board came into court setting up the fraud practiced by the Land Company, and then compromises the case, without the State's consent. There has not been a decree on the merits passing on the question of fraud **vel non**, the Levee Board having compromised the same before the merits of the case was reached. The Attorney General protested against the Court ratifying the compromise, and then sought to appeal from the judgment. In such a case, if there be no precedent for an appeal, on account of the importance of the issues and the fact that a fraud is sought to be unearthed, the establishment of a precedent for an appeal in such a case as this would not be without good results, particularly in view of the fact that the statutes give such a right of procedure in a State court. Courts of equity are constantly establishing new precedents to meet changed conditions, and in such a case as this, where the State is virtually the Levee Board, suing for the interest of the public, the creation of such a precedent, if none should exist, would be a step in the right direction. "This suit does not stand," as said by Judge Shelby on a branch of this very case, "like a suit between private parties." The Court made a distinction for that reason **(204 Fed. 745)**, citing **U. S. vs. Minor, 114 U. S. 230, 240,** in support thereof. When we examine this cited case we find, in the said opinion, this significant statement, involving, too, a case of **fraud**:

> "When, therefore, he succeeds by misrepresentation, by fraudulent practices, aided by perjury, there would seem to be more reason why the United States, as the owner of land of which it has been defrauded by this means, should have remedy against **that fraud—all the remedy the Courts can give**—than in the case of a **private owner** of a **few acres** of land on whom a like fraud has been practiced";

showing that, in matters which concern the Government, the Courts go the limit to unearth fraud—"all the remedy the Courts can give."

Could there be a case presented calling more loudly for the interposition of a court of equity in behalf of the relief prayed for than this?

There seems, from the very first, to have been a predetermination never to let this case go before the Courts on the merits, as every means possible has been resorted to in order to prevent it.

Perhaps your Honors have not had before you, for many years, from this State, a case which involves property of greater value than that which is the subject of contestation in this suit. It embraces nearly a million acres of land, and is worth, perhaps, seven and one-half million dollars.

But this is not the only thing of value in this case. That which is of far greater importance is the dignity of this Commonwealth, and the honor, manhood and high purposes of her citizenry, and we would impress upon your Honors that, with the exception of a few persons directly interested, the people of the State are unanimous in their vehement expressions of disapproval against this compromise of the public honor.

The State feels, under the peculiar circumstances of

this case, that it has a right to appeal from the action of her subordinate agent and from the decision of the Court which ratifies that action and makes it the basis for a judgment, which, unless reversed, will put a subordinate agency of the State on record as being, not inimical to a fraud as such, but which is willing for fraud to be commmitted by its own predecessor, in order that such an illegal action may be used as the basis for obtaining a little hush money from the other party to the said fraud, in defiance of the express terms of the laws of the State, which absolutely provide that, in such cases, the fraud-contract must be set aside, and the property which is the basis thereof must be returned to the Government, or its proper agent.

Revised Civil Code of Louisiana, Articles 11-12, 1891-1892-1893, 1895.
30 La. An. 207.
1 La. An. 176.
17 La. An. 261.
1 La. An. 69.
110 La. Rep. 612.

The very mudsill of popular government is popular confidence in public officials. The magnificent superstructure reared in this country must crack and crumble when that confidence is shaken and sunk.

This great Court, if it may, without usurpation, ought, we respectfully urge, to sustain and restore public confidence wherever and whenever its powerful hand can brush aside the webs of ancient practice and grasp the corrupters of the people's agents and firmly hold them in the courts until justice may be done.

We respectfully pray that the judgment of the District

Court of the Western District of Louisiana, denying petitioner a right to appeal, as not a party of record, be reversed; and the judgment of the Circuit Court of Appeal for the Fifth Circuit, affirming said judgment, be reversed; and that petitioner be granted an appeal; and for such other and necessary orders as will obtain for petitioner an appeal as a party plaintiff of record; but, in the alternative, in the event the Court should hold that petitioner was not, in person, or by its authorized agent, a party plaintiff of record, then petitioner prays that the judgment of the District Court for the Western District of Louisiana and the Circuit Court of Appeal for the Fifth Circuit be annulled and reversed, and that petitioner's intervention be ordered filed, and an appeal granted, and for all such orders and decrees as may be necessary in the premises.

A. V. COCO,
Attorney General.

HARRY GAMBLE,
Assistant Attorney General,
For Petitioner.

Note:
Former Attorneys General:
WALTER GUION, 1908-12.
R. G. PLEASANT, 1912-16.

ADDENDUM.

We observe in respondent's brief that, in addition to arguing the same matter presented by us in the foregoing brief, it has argued the merits of the appeal as if the same had been granted, and was before the lower Courts, and now before this Court. See its subjects VIII, p. 57; IX, p. 62; X, p. 69, and portions of its arguments under other heads.

We understand the issue here, and below, to be whether petitioner, the State of Louisiana (or her agent) was a party plaintiff of record and entitled to appeal from the judgment dismissing the suit; or, if not a party plaintiff of record, then entitled to appeal as a third party in interest, (1) on mere allegations to that effect, or (2) on said allegations considered and adjudged as **prima facie** proven.

And we have so presented our case. If, however, we have misconceived the legal status, and, in fact, the case is treated as one now on appeal on the merits, then we respectfully pray that the Court may so indicate and that we be granted twenty days from such notice to file a brief on the merits.

A. V. COCO,
Attorney General.

HARRY GAMBLE,
Assistant Attorney General.

Office Supreme Court, U. S.
FILED
MAY 3 1917
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 264.

UNITED STATES OF AMERICA ex REL. THE STATE OF LOUISIANA, PETITITONER.

versus

HONORABLE ALECK BOARMAN, JUDGE UNITED STATES DISTRICT COURT OF LOUISIANA, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SUPPLEMENTAL BRIEF OF PETITIONER.

A. V. COCO,
Attorney General.

HARRY GAMBLE,
Assistant Attorney General.

May, 1917.

May it please the court:

1. The Attorney General of Louisiana is authorized to represent the interest of the State, either upon the order of the Governor or whenever he may himself deem it necessary (Wolf's Revised Statutes, 131, and act 65 of the Laws of Louisiana of 1884; both found in volume 1, pages 54-55).

2. Inasmuch as there is shown to be some difference between counsel for petitioner and respondent on the Louisiana practice as to third persons appealing, we refer the court to Cross on Pleadings (Louisiana), Roehl's edition, paragraph 303, page 458; though this is a minor and unimportant question.

3. As to the authority of taxpayers in Louisiana to bring suits to protect their interests when it appears that public officials or public boards or municipal authorities are about to do an illegal act, the consequences of which will be to affect taxation, will be found in 39th Annual, page 106, Handy *vs.* New Orleans and other cases there cited. It may be noted that the West reprint will show all later cases in which this case and previous cases are cited.

4. Upon a further consideration, we think it proper, and our duty, to suggest to the court what we have not heretofore done in the brief, to wit: That the protest of the Attorney General of Louisiana, Record, 62-63, in response to the suggestion of the defendant below and a summons of the court was in fact making the State of Louisiana a party to the record before the decree. 110 Federal, page 486, Percy Summer Club *vs.* Astle and others, and authorities from the United States Supreme Court reports in the case cited.

5. We suggest to the court the case of Georgia *vs.* Florida, 17 Howard, page 478, full briefs of all counsel being found

in 15 Law Edition, page 181, is a splendid illustration that this tribunal will not blindly follow chancery rules.

We respectfully pray that we be permitted to file this supplemental list of authorities for the convenience of the court.

A. V. COCO,
Attorney General.
HARRY GAMBLE,
Assistant Attorney General.

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SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM 1916

No. 264

UNITED STATES OF AMERICA, *EX REL.* THE STATE OF LOUISIANA, PETITIONER,

vs.

HONORABLE ALECK BOARMAN, JUDGE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT

This cause is brought to this court on writ of *certiorari* heretofore granted by this court, directing the United States Circuit Court of Appeals for the Fifth Circuit to certify to this court for its review a suit in which the United States ex rel. the State of Louisiana was petitioner, and the Hon. Aleck Boarman, then Judge of the United States District Court for the Western District of Louisiana, was respondent. The writ of *certiorari* was sought in order to review the de-

cision of the Circuit Court of Appeals entered on October 29, 1914, in said cause, denying petitioner's application for writs of *mandamus* and *certiorari* to compel the Judge of said United States District Court to allow a petition of intervention to be filed by the State of Louisiana and to grant to the State an appeal to said Circuit Court of Appeals from a final decree entered in the United States District Court for the Western District of Louisiana on October 21, 1913, in the case entitled "BOARD OF LEVEE COMMISSIONERS OF THE TENSAS BASIN LEVEE DISTRICT VS. TENSAS-DELTA LAND COMPANY, LIMITED."

The following statement of facts will show the questions now presented to this court for its decision:

STATEMENT OF FACTS

1. The "Board of Levee Commissioners of the Tensas Basin Levee District" was, by various acts of the Louisiana Legislature (Act No. 26 of 1884, Act No. 59 of 1886, and Act No. 77 of 1888) "constituted and created a body politic, with corporate powers to sue and be sued in their corporate capacity, to have a seal, to levy taxes and assessments, and to issue and sell its corporate bonds." The purpose of the corporation was to develop, establish and complete, either within or without the State, a system of levees and other works of public improvement designed to aid in protecting from floods and over-flows property in the Tensas-Basin Levee District, composed of certain parishes situated in the Basin of the Tensas River. Warrant for this legislative action is found in Article 214 of the Louisiana Constitution of 1879.

2. It was provided by Act No. 77 of 1888 that "in order to provide additional means to carry out the purposes of the corporation," all the lands then or thereafter owned by the State within the district, both those granted to the State by the United States, and those forfeited to the State for non-payment of taxes "*are hereby given, granted, bargained, donated, conveyed and delivered*" unto said Board. The Auditor and Register of the State Land Office were required,

> "*On behalf of and in the name of the State, to convey to said Board of Levee Commissioners, by proper instrument of conveyance,* the lands hereby granted or intended to be granted and conveyed to said board, whenever from

time to time said Auditor and said Register of the Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners or by the president thereof; and thereafter said president of said Board shall cause said conveyances to be properly recorded in the Recorder's office of the respective parishes wherein said lands are or may be located, and when said conveyances are so recorded the title to said lands with the possession thereof, *shall from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees.* * * * Said Board of Levee Commissioners shall have the *power and authority to sell, mortgage, pledge, or otherwise dispose of said lands in such manner and at such times and for such prices as to said Board shall seem proper.*"

3. The lands thus conveyed to the Levee Board consisted, on the face of the record, of 885,040.31 acres (R. 138). But a great part of the lands was held by the State as forfeited to it for taxes. Many of these lands had been redeemed, and the Levee Board had no title, or the same were conveyed by duplicate, triplicate or quadruplicate descriptions, or previous conveyances thereof had been made by the Levee Board, so that the Levee Board had title to a much less quantity of lands than shown on the face of the deeds to it. In the sworn answer filed by the Tensas-Delta Land Company, Limited, in this cause, it appears that the Levee Board took title to only 580,000 acres of the lands thus conveyed, and of these more than 20,000 acres were absolutely worthless. (R. 138.)

4. In November, 1898, ten years after the grant was made, the Levee Board, having tried in vain to sell these lands for fifty cents an acre (R. 136, 139), sold *without any warranty* whatever, the lands it had received from the State, to the Tensas-Delta Land Company, Limited, a Michigan limited partnership association composed of nonresidents of Louisiana, (R. 137-138). The sale was for $130,000, of which $30,000 was paid in cash and the balance in notes for one, two or three years, with interest at six per cent. per annum (R. 137, 134), all of which notes were duly paid by the company (R. 134). Lands of that character—swamp and over-flowed lands—were then selling in Louisiana at from ten cents to twenty-five cents per acre (R. 139),

and the price paid by the Tensas-Delta Land Company, Limited, to the Levee Board, was approximately 22.4 cents per acre (R. 136).

5. On November 6, 1909, *eleven years after the sale was made, and after the lands had become valuable because of the growth of the country, and after the building of levees with funds obtained from the sale of the lands and from the large special taxes and assessments levied upon them by the Tensas-Basin Levee District, and after eight of the persons connected with the transaction were dead,* the State of Louisiana brought suit in her own courts to set this sale aside and to recover the unsold lands and the proceeds of the lands sold.

The grounds of this action were that the sale was brought about by fraud and inferential bribery; that if the sale was not fraudulent it was a disguised donation; and if not a disguised donation, it was annulable for *lesion beyond moiety.*

To this action defendant pleaded that the State was without interest and could not maintain the action. This plea was sustained and the suit dismissed. The State appealed to the Supreme Court of Louisiana, which affirmed the judgment of dismissal. Application for re-hearing was made and denied.

This case is reported STATE vs. TENSAS-DELTA LAND COMPANY, LIMITED, 126 LA., 59.

6. After the above decision became final, the Board of Levee Commissioners of the Tensas-Basin Levee District, on July 14, 1910, adopted a resolution directing its attorney, M. C. Thompson, to bring suit in its name to recover these lands, and to get into communication with the Attorney General, and, with him, to prepare, file and prosecute said suit, (R. 102-103).

After this action had been taken by the Levee Board, the Legislature adopted Act No. 3 of the Extra Session of 1910, approved August 19, 1910, which provides that:

> "It is hereby made the duty of the Attorney General of the State, upon the request of the Governor, to represent the State, or any political agency or sub-division thereof, in any suit in any court involving title to any land or real property belonging to the State of Louisiana, or any of its political agencies or sub-divisions, whether the title to said land or real property is vested in or

appears in the name of the State, or in the name of any of its political agencies or subdivisions."

Acting upon this statute, the Governor, on January 4, 1911, directed the Attorney General to institute suit for the recovery of these lands "*for the use and benefit of and in the name of the Tensas-Basin Levee Board.*" (R. 102).

7. On September 15, 1911, the Tensas-Basin Levee District, appearing by its attorney, M. C. Thompson, under the above mentioned resolution of July 14, 1910, and also by the Attorney General under the above mentioned instructions of the Governor, instituted suit in the State Court of Ouachita Parish, to set aside the sale of November 4, 1898, and to recover the unsold lands and the proceeds of the lands sold. The averments of the petition in this case were the same as those in the petition in the action dismissed by the State Supreme Court (R. 91-102).

The defendants, being all citizens of States other than Louisiana, removed the cause into the United States District Court for the Western District of Louisiana (R. 104-107), filed the record there, and took a rule on plaintiff to reform its pleadings into a bill in equity, in conformity to the rules prescribed by the Supreme Court of the United States (R. 107-109). Plaintiff acquiesced in this rule and got an order permitting it to file a supplemental and amended bill (R. 110-111). The reformed pleadings and the supplemental and amended bill were filed as one proceeding (R. 111-128).

This new bill was largely taken up with correcting and modifying the averments of the original petition, particularly those as to the participation of the Levee Board itself in the alleged fraud, and those as to the value of the lands (R. 111-128). The original petition valued the lands unsold by the Tensas-Delta Land Company, Limited, at $10 per acre (R. 100), and the amended bill valued the same at $4 per acre (R. 123).

8. The Tensas-Delta Land Company, Limited, insisted that the bill was utterly defective and without equity:

First.—Because the action, being barred on the face of the bill by the limitation of ten years, it contained no averments to take the case out of the operation of the statute, except the bare statement that the Board did not discover the fraud until October 13, 1909, eleven years after it was charged to have been perpetrated.

Second.—Because it did not offer to do equity by returning the purchase price of the lands, with interest, nor the large amount of taxes levied and collected on the lands, nor the costs and expenses of selling the lands, nor the costs and expenses of preserving and guarding the lands from trespassers.

Third.—Because it sued to recover the purchase price of the lands sold, and declined to ratify the sales so made.

Fourth.—Because, so far as it sought to annul the sale as a disguised donation (on its face an absurd averment), it was barred by the statute of limitation of ten years.

Fifth.—Because, so far as it sought to set aside the sale for *lesion beyond moiety*, it was barred by the statute of limitation of four years.

The defendant filed general and special demurrers setting up the above grounds (R. 129-130), and, inasmuch as the bill charged fraud, the defendant also filed an answer in support of the demurrers, denying every averment in the bill charging fraud and conspiracy, and every averment from which fraud could be inferred, and setting up the true facts, (R. 131-141). This answer was filed to fortify the demurrers, and was filed in compliance with the practice in the Fifth Circuit, as declared in Johnson vs. Forsyth Mercantile Company, 127 Fed., 845, such being understood to be the general rule of equity practice in cases where fraud is charged in the bill, though specifically required by the Equity Rules of the United States Supreme Court only in the case of a plea.

9. These demurrers were set down for argument, were argued and submitted.

On the day fixed for the decision of the case, the complainant appeared and asked leave to file a *second* amended bill. The court, considering that the proffered amendments did not make the bill good, refused the proffered amendments and entered a decree dismissing the bill (R. 163). It was directed by the court, however, that the then tendered amendments be filed in the record to show what said tendered amendments were (R. 163).

From this decree the Levee Board appealed to the United States Circuit Court of Appeals, taking this appeal only fifteen days before the time allowed for appeal would expire (R. 172).

In the Circuit Court of Appeals it was insisted by the Tensas-Delta Land Company, Limited, that the proffered

amendments did not make the bill good, and in support of this contention its counsel relied on a long line of decisions, stretching from STEARNS vs. PAGE, 7 How. 819, through WOOD vs. CARPENTER, 101 U. S., 135; NATIONAL BANK vs. CARPENTER, 101 U. S., 567, to WODENSAC vs. REIHER, 115 U. S., 102; HAMMOND vs. HOPKINS, 143 U. S., 274; FELIX vs. PATRICK, 145 U. S., 332; FOSTER vs. R. R. Co., 146 U. S.,88; BOONE vs. BURLINGTON R. R., 139 U. S., 693; HARDT vs. HEIDWEYER, 152 U. S., 559.

The Circuit Court of Appeals, however, reversed the decision of the District Judge and held that the proffered amendments would make the bill a good bill (R. 41-50).

10. The cause was remanded to the District Court allowing the defendant twenty days to answer (R. 51). On account of the great amount of detail work necessary for the preparation of answer, the defendant obtained a delay until rule day in August, 1913, to file its answer to the amended bill (R. 52-54). What occurred subsequent to the remanding of the cause to the District Court is shown in Judge Boarman's return to the order to show cause subsequently issued out of the Circuit Court of Appeals. That return is found in the record, pages 24 to 37 inclusive.

11. On July 11, 1913, the Board of Levee Commissioners of the Tensas-Basin Levee District, by proper resolution, tendered to the defendant a compromise of this litigation, upon the condition that the defendant should pay the Board the sum of $100,000. This proposition was accepted, and on the same day the parties appeared before a notary and executed a formal act of compromise, the $100,000 being paid by a ten day draft, which draft was paid at maturity, and the proceeds deposited in the Treasury of the State of Louisiana, to the credit of the Tensas-Basin Levee District Fund (R. 24, 64-65).

The compromise was in the form of a Notarial Act, duly passed before the Clerk of the Seventh Judicial District Court, in and for the Parish of Richland. In the Notarial Act it is, among other things, set forth that the same is executed in behalf of the Levee Board, by T. B. Gilbert, Sr., its President, pursuant to a resolution of said Board, adopted in regular session, on July 11, 1913. A certified copy of said resolution being attached to the act of compromise (R. 56-60).

By this act of compromise (R. 56-57), which both parties declared they preferred to the hope of gaining balanced by the fear of losing in the litigation between them in the United States District Court, in cause 694 of its docket styled BOARD OF LEVEE COMMISSIONERS OF THE TENSAS-BASIN LEVEE DISTRICT VS. TENSAS-DELTA LAND COMPANY, LIMITED, they agreed to forever end and set at rest all matters and things set up and contained in the original and amended bills of complaint in said cause, and to forever set at rest all questions relating to the validity of the title of the Tensas-Delta Land Company, Limited, to the lands purchased by the latter in November, 1898. In consideration of the payment, the Levee Board agreed to dismiss the litigation at its cost, and it ratified and confirmed the title of the Tensas-Delta Land Company, Limited, to the lands described in the deeds executed by the Levee Board to the Land Company on November 9 1898. The compromise further ratified, confirmed and approved a previous compromise made between the parties on July 9, 1903 (R. 57).

12. On July 19, 1913, the execution of the Notarial Act of compromise, and the payment of the price thereof, were suggested to the court by the defendant, and a motion made that the Levee Board and R. G. Pleasant, Attorney General of the State of Louisiana, attorney of record for complainant, show cause, on a day named, why the suit should not be dismissed at the cost of complainant, and praying that, until the motion could be heard, all further proceedings in the cause be stayed (R. 54-55).

The court issued an order to show cause, returnable on the first day of the next term of the court at Monroe, to be holden in October (R. 55). On the same day the rule was filed, the Secretary of the Levee Board, under the Board's direction, addressed a letter to the Attorney General, as counsel of record for the Board, requesting him to dismiss the case in accordance with the compromise, a copy of which had been transmitted to him on the 14th (R. 70-71). The Attorney General apparently declined to obey the instructions of his client. Consequently, the Levee Board, through its President, T. B. Gilbert, Sr., on August 5, filed an answer to this order to show cause (R. 61). This answer admitted the settlement of the suit and the payment of the amount named in the act of compromise, it affirmed the act of compromise and consented to the final dismissal of the cause

(R. 61) This action of the President was ratified by a formal resolution of the Board, adopted October 9, 1913, (R. 73).

13. The Attorney General also made answer to the rule to show cause. This answer did not purport to be in the name or behalf of the State of Louisiana. It is signed "R. G. Pleasant, Attorney General State of Louisiana,, and attorney of record for complainant," (R. 62-63). In his answer the Attorney General objected to the dismissal of the suit and assigned four grounds in opposition thereto, which, as will be seen from the transcript, are, in substance, as follows:

First.—That the suit was based upon a fraudulent sale of lands and that the fraud vitiated the contract of sale.

Second.—That a fraudulent sale of public lands cannot be ratified and approved by a subsequent agreement between the vendor and the vendee.

Third.—That complainant should not be permitted to use the court and its processes for the purpose of condoning and compromising fraud for money.

Fourth.—That the Attorney General cannot dismiss the suit without express authority from the Governor of the State of Louisiana, for the reason that his right to represent complainant and prosecute the suit is conferred upon him by the Governor under the provisions of Act No. 3 of the Extra Session of the General Assembly for the year 1910.

In stating the second point so made in his answer, the Attorney General says that the only point in dispute between the parties was the question of fraud, all others having been abandoned during the progress of the cause, as shown in the judgment of the Circuit Court of Appeals, and by the admission of complainant's (defendants) counsel in open court, (R. 62-63). This statement is without foundation in fact. Counsel for defendant abandoned nothing but the plea of prescription of one year. The plea of prescription of ten years still remains. Complainant will have to prove all its averments to escape the operation of this limitation. Moreover, every averment in the bill, from which fraud could be inferred, was denied by defendant under oath (R. 131-141). The decision of the Circuit Court of Appeals upon the demurrer was based upon the facts appearing upon the face of the supplemental and amended bill and the amendments proffered. In its opinion the Circuit Court of Appeals, said:

"In deciding the questions raised by the demurrers, we have assumed, as required by the rule, that the averments of fact in the bill are true. If the cause comes to trial on the merits, the defendant will not be prejudiced by what we have said should the evidence show a different state of facts from that alleged." (R. 50).

14. The Attorney General did not appear on the first day of the October term of the United States District Court, to support his objections. Judge Boarman returns that for that reason he deferred the hearing to the next day and caused a telegram to be sent to the Attorney General, in order to give him full opportunity to be present and heard upon the motion to dismiss the suit (R. 25). Still the Attorney General did not appear. The compromise was proved by evidence adduced in open court. The payment of $100,000 into the State Treasury was shown (R. 64-74) and brief was filed by defendant in support of the motion to dismiss (R. 74-86), and, for reasons given by the Judge, the order was entered on October 21, 1913, dismissing the cause as asked for, both by the complainant and the defendant, (R. 86-87).

15. Nothing was heard from the Attorney General until April 6, 1914, when he appeared before the court and asked leave to file a petition of intervention and appeal from the decree of October 21, 1913, dismissing the suit, and an assignment of errors in behalf of the State (R. 27). The decree of dismissal had become final by the adjournment of the court for the term, and the time for appeal had elapsed within a margin of fifteen days, when the State, claiming to be aggrieved by the decree of dismissal, made the application to intervene and appeal (R. 5-10). The District Judge refused both the application to intervene and the application for an appeal.

16. Thereupon the State made application to the United States Circuit Court of Appeals for the Fifth Circuit, for writs of *mandamus* and *certiorari* (R. 1-17) The Court of Appeals ordered the District Judge to show cause why the writs should not issue (R. 23). Judge Boarman made a full and detailed return, setting forth the facts upon which his action was based, and giving his reasons therefor (R. 24-37). The reasons for the action of the District Judge in

refusing to allow the intervention and appeal are stated by him in his return as follows:

First —The State of Louisiana is without legal interest in the subject-matter of this suit, and has no authority in its own name or right to carry on the litigation, and it was so specifically held by the Supreme Court of Louisiana in the cause entitled State vs. Tensas-Delta Land Company, Limited, reported in 126 La., 59.

Second.—Inasmuch as the State of Louisiana was not a party to the suit, it had no appealable interest or standing in a court of equity to ask for an appeal, even admitting, *arguendo*, that it had the same time within which to appeal as that possessed by a party to the suit.

Third.—The petition of the Honorable Attorney General, asking leave, in the name of the State of Louisiana, to intervene in the cause, was one which, in my opinion, appealed to my discretion as Chancellor, and in the exercise of that discretion I deemed it best to deny the petition, and this in particular in view of the fact that the State had already had its day in court and had been adjudged by the highest Court of its own sovereignty to be devoid of legal interest in the subject-matter of the litigation. The intervention being denied, it followed, in my opinion, as a logical consequence, that no right to appeal existed and appeal was also denied.

Fourth.—Independent of the previous decision of the State Court in the case in the 126th Louisiana, it is my view that the merely general nature and character of the interest alleged by the State in the subject-matter of the litigation are not such as to entitle the State to appeal from the decree of dismissal of October 21, 1913, especially in view of the fact that such decree is based upon the consent of both parties to the record and the good faith of the members of the Levee Board in making the compromise is not questioned.

Fifth.—The Honorable Attorney General of Louisiana did not show any authority to apply for leave to intervene or appeal, other than as arises from his office as Attorney General or his position as solicitor and of counsel for the Levee Board in the suit pending in said District Court; and, in my opinion, there existed in him no right or authority in either capacity to carry on

the litigation or appeal the cause contrary to the wishes and best judgment of his client, the Board of Levee Commissioners of the Tensas-Basin Levee District, which, for a valuable consideration, and upon mature deliberation, had seen fit voluntarily to compromise the same. (R. 27-28).

In paragraph X of his return the District Judge adds:

"For the reasons already stated, I am of opinion that the petitioner has no paramount and superior right as a sovereign State to intervene in said suit No. 694, and that it is not entitled, as a matter of law or equity, to appeal to this Honorable Court from said decree of October 21, 1913, ratifying said compromise, as aforesaid." (R. p. 28.)

17. After full hearing, the United States Circuit Court of Appeals, on October 29, 1914, denied both writs, giving its reasons as follows (R. 88-89):

"1. Under the decision of the Supreme Court of the State of Louisiana, reported in STATE vs. TENSAS-DELTA LAND COMPANY, LIMITED, 126 La., 59, the Supreme Court of the State, on full consideration, decided that the State was without real or beneficial interest in the lands in controversy, and this decision is controlling in this court.

"2. One who is not a party to a record and judgment is not entitled to an appeal therefrom. (BAYARD vs. LOMBARD, 9 How., 530; INDIANA vs. LIVERPOOL & LONDON & GLOBE INS. Co., 109 U. S., 168; *Ex-parte* COCKROFT, 104 U. S., 578; *Ex-parte* IN THE MATTER OF LEAF TOBACCO BOARD OF TRADE OF THE CITY OF NEW YORK PETITIONER, 222 U.S., 578, 581)."

It is this decision which the State now seeks to overthrow in this court.

I.

SECTION 571 OF THE CODE OF PRACTICE OF LOUISIANA DOES NOT CONFER UPON THE STATE THE RIGHT TO APPEAL FROM THE DECREE OF THE UNITED STATES DISTRICT COURT, IN EQUITY.

In the brief filed by the Attorney General it is insisted that Section 571 of the Code of Practice of Louisiana authorizes an appeal by the State from the decree of October 21, 1913, dismissing the suit brought by the Levee Board; but if this section were applicable at all, it would not confer such right.

Section 571 of the Code of Practice of Louisiana provides:

> "The right of appeal is given not only to those who were parties to the cause on which a judgment has been rendered against them, but also to third persons to such suit, when such third persons allege that they have been aggieved by the judgment."

Even though a statute of the State of Louisiana, governing the proceedings in its courts, could govern the procedure on appeal in a Federal Court of Equity, and even though the right of appeal in this cause should be regulated and determined by Section 571 of the Code of Practice of the State of Louisiana, it is the settled jurisprudence of Louisiana that the third person seeking an appeal must not only allege that he had been aggrieved by the judgment, but he must in fact have an interest in the subject-matter of the litigation which is affected by the judgment sought to be appealed from, and he must prove that interest.

In LACROIX VS. MENARD, *et. al.*, 7 Martin (N. S.), 345, decided in 1829, four years after the Code of Practice went into effect, the Supreme Court of Louisiana said:

> "This Court has already decided that when persons not parties to a judgment appeal from it, they must allege and prove in the court of first instance their right to do so; that is, they were aggrieved by it. The correctness of this mode of carrying the 571st Article of the Code into effect has been strongly contested in argument, but after much reflection we do not see what other course can be adopted. The fact of a party being aggrieved by judgment rendered between others is an indispensable condition to his right of appealing. That right must be established somewhere before the correctness of the judgment complained of can be examined into. It cannot be tried in this court, and it must be in that below, or the statute would become a dead letter."

This decision was confirmed and the opinion quoted with approval in FAZENDE vs. FLOOD 24 Ann., 425.

See also:

Arrowsmith vs. Rappelge, *et. al.*, 19 Ann., 327;
State ex rel. Belden vs. Markey, 21 Ann., 743;
Block, Britton & Co. vs. Barton, Miller & Co., 27 Ann., 89;
Guilbeau vs. Detiege, 32 Ann., 911;
Levert vs. Shirley Planting Co. 135 La., 929.

In the case above quoted, STATE EX REL. BELDEN vs. MARKEY, 21 Ann., 743, it was claimed that the affidavit of the third person appellant of his interest and of his being aggrieved by the judgment was binding on the Court, but the Court overruled this claim.

City vs. Dufossat, 46 Ann., 398;
Bland vs. Edwards, 52 Ann., 822;
Board of Liquidation vs. N. O. Waterworks Co., 39 Ann., 202.

The Attorney General seems to think that all he has to do is to aver that the State is aggrieved by the judgment, make affidavit to his petition, and that the State is then entitled to an appeal of right. As shown below, the State has no interest in this litigation.

In GUILBEAU VS. DETIEGE, 32 La. Ann., 909-911, it is said:

> "The rule of law which grants to a third party the right of appeal from a judgment rendered in a suit to which he was not a party, requires him to *allege* and *show* a direct pecuniary interest in the controversy; he must be interested in the defeat of either plaintiff or defendant, or of both; *he must show such an interest as would justify him in law to intervene in the suit before trial and judgment.*"

II.

THE RIGHT TO APPEAL FROM THE DECISION OF THE UNITED STATES DISTRICT COURT, IN EQUITY, IS NOT REGULATED AND CONTROLLED BY THE STATUTES OF LOUISIANA, BUT EXCLUSIVELY BY THE ACTS OF CONGRESS.

Assuming, as he does, that Article 571 of the Code of Practice of Louisiana would confer upon the State the right of appeal, if this litigation were pending in the State Courts of Louisiana, the Attorney General urges that this right of appeal thus conferred by State law will be enforced in the Federal Courts. It is clear, however, that the right, if any, of appeal from a judgment or decree of the District Court of the United States does not depend upon State law, but upon Federal law, and unless found in the Acts of Congress creating the inferior courts of the United States, and regulating the procedure therein, the same does not exist.

It is true that the Courts of the United States have held that where a State statute gives a right, the Federal Courts will give the remedy, but mere methods and rules of procedure provided by State statutes for the courts of the State do not apply to the Federal Courts of Equity, or to appellate procedure in those courts. These rules of State procedure are not the rights covered by the rule.

By the provisions of Section 913 of the Revised Statutes of the United States, which is taken from the Process Act of May 8, 1792, in all suits in equity in the Circuit and District Courts in the United States, forms and modes of proceeding shall be according to the principles, rules and usages which belong to Courts of Equity. In HURST vs. HOLLINGSWORTH, 100 U. S., 100, at page 103, this Court said that the requirement of this statute has always been obligatory upon parties and the Court wherever the question has been raised.

In Section 914 of the Revised Statutes of the United States it is provided that the practice, pleadings, forms and modes of proceeding in actions at law in the District Courts, shall conform, as near as may be, to the practice, pleadings, forms and modes of proceeding in like causes in the State Courts. Yet, in all proceedings in error in cases at law in the Federal Courts, the methods and rules of procedure in the State Courts do not apply.

In UNITED STATES vs. TRAIN, 12 Fed., 852 (C. C.), in an opinion by Justice Gray, it was early held that the taking of a case from one Federal Court to another by writ of error or appeal is regulated exclusively by the Acts of Congress, or, when those are silent, by rules derived from common law, from ancient English statutes, or from the practice of the Courts of the United States.

This rule has been recognized in many later cases.

Chateaugay Ore & Iron Company, Petitioner, 128 U. S., 544, 553-555;

St. Clair vs. United States, 154 U. S., 134, 153;

Ghost vs. United States (C. C. A.), 168 Fed., 841, 843;

Logan vs. Goodwin (C. C. A.), 104 Fed., 490;

Menge vs. Warriner (C. C. A.), 120 Fed., 816, 817;

Francisco vs. Chicago & A. R. Co. (C. C. A.), 149 Fed., 354, 358, 359.

In CHATEAUGAY ORE & IRON COMPANY, PETITIONER, 128 U. S., 544, 553-555, in an opinion by Mr. Justice Blatchford, it is said:

> "We are of opinion that the practice and rules of the State Court do not apply to proceedings in the Circuit Court taken for the purpose of reviewing in this court a judgment of the Circuit Court, and that such rules and practice, embracing the preparation, perfecting, settling, and signing of a bill of exceptions, are not within the 'practice, pleadings, and forms and modes of proceeding' in the Circuit Court, which are required by Section 914 of the Revised Statutes (U. S. Comp. St. 1901, p. 684), to conform 'as near as may be' to the 'practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State' within which the Circuit Court is held, 'any rule of court to the contrary notwithstanding.' * * *
>
> "The manner or time of taking proceedings as a foundation for the removal of a cause by a writ of error from one Federal Court to another is a matter to be regulated exclusively by Acts of Congress, or, when they are silent, by methods derived from the common law, from ancient English statutes, or from the rules and practice of the Courts of the United States."

In ST. CLAIR VS. UNITED STATES, 154 U. S., 134, 153, it is said:

> "What is necessary to be done in a Circuit Court, even in civil cases, in order that its action upon any particular question or matter may be reviewed or revised in this court, depends upon the Acts of Congress and the rules of practice which this court recognizes as essential in the administration of justice."

MENGE VS. WARRINER, 120 Fed., 816, 817, is a decision of the Circuit Court of Appeals of the Fifth Circuit, delivered by Circuit Judge Shelby, in which he says that the question of the finality of a judgment or decree for the purposes of review by a writ of error or appeal in the Federal Courts is not affected by the procedure in the State Courts, but must be governed by the rules established by Federal legislation and by the decisions of the Federal Courts.

In FRANCISCO VS. CHICAGO & ALTON R. R. CO., 149 Fed., 354, 358-359, Judge Sanborn, speaking for the Court of Appeals of the Eighth Circuit, says of the Conformity Act that:

> "Section 914 is limited by its express terms to the practice and proceedings in the Circuit and District Courts to procure their judgments. It has no application to the practice or proceedings of the Federal Appellate Courts or to any matters relating to bills of exceptions, motions for new trials, or any other means adopted to review the judgments of the Circuit or District Courts. The power and practice of the Federal Appellate Courts are derived exclusively from the Constitution, the Acts of Congress, the common law, the ancient English statutes and the rules and practice of the Courts of the United States, and they may not be extended, diminished, controlled or affected by the statutes of the States or the practice of their courts."

III.

THE STATE OF LOUISIANA IS WITHOUT LEGAL INTEREST IN THE SUBJECT-MATTER OF THIS SUIT, AND HAS NO AUTHORITY IN ITS OWN NAME OR RIGHT TO CARRY ON THE LITIGATION, AND HENCE NO RIGHT TO INTERVENE.

In order to substantiate this it is necessary only to refer to the act creating the Levee Board and the decision of the Supreme Court of Louisiana interpreting the same.

The Tensas-Basin Levee District was created by the Legislature of Louisiana, by Act No. 59 of the session of 1886. Section 3 of that act constitutes and creates the Board of Levee Commissioners of the Tensas-Basin Levee District to be a body politic, with corporate powers, to sue

and be sued in their corporate name, to have a seal and to have the power to do and perform all purposes of the act, etc. The section reads as follows:

> "That the said commissioners shall constitute a 'Board of Levee Commissioners of the Tensas-Basin Levee District,' and they shall be and they are hereby constituted and created into a body politic with corporate powers; they shall have power to sue and shall be sued in the corporate name, and shall have a seal, and shall have the power to do and perform all the purposes of this act; the domicile of this corporation shall be at the Town of Rayville, in the Parish of Richland, and it shall be sued there, and service of citation shall, in all cases, be made upon its president, either in person or at his domicile during his absence wherever he may reside, as in the case of ordinary suits."

Act No. 77 of 1888 is amendatory of the act above referred to, and by virtue of this amendatory act the lands which are the subject of this litigation were conveyed by the State of Louisiana to the Levee Board. This act contains the following provisions:

> "All lands now belonging or that may hereafter belong to the State of Louisiana and embraced within the limits of the Tensas-Basin Levee District, as herein constituted, shall be, and the same are hereby given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas-Basin Levee District, whether said lands are part of lands originally granted by the Congress of the United States to this State, or whether said lands have been or may hereafter be forfeited to or bought in by or for or sold to the State at tax sales, for non-payment of taxes," etc.

The act further provides:

> "The Auditor and Register of the State Land Office of the State of Louisiana shall, on behalf of and in the name of the State, convey to said Board of Levee Commissioners, by proper instrument or conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time,

said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof, etc. And when said conveyances are so recorded, the title to said lands, with possession thereof, shall from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees. * * * * *Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands, in such manner and at such times and for such prices as to said Board shall seem proper.*"

Prior to the institution of the suit No. 694, brought by the Levee Board against the Land Company, a suit for the recovery of the same lands was brought in the State Courts of Louisiana by the State of Louisiana against the Land Company. That case went on appeal to the Supreme Court of Louisiana, and is reported STATE VS. TENSAS-DELTA LAND COMPANY, LIMITED, 126 La., 59. The decision of the Supreme Court of the State construes the act under which the Levee Board was created. It was there specifically held that the Levee Board could sue to recover the lands, but that the State could not. In the opinion of the Court, by Mr. Justice Provosty, it is said (pp. 71-73):

"Most assuredly and beyond all question, *the Legislature has divested the State absolutely of all beneficial interest in said lands, and transferred same to the said Board of Levee Commissioners.* It is impossible to read the said Act 59 of 1886 hereinabove quoted, and come to any other conclusion.

"The argument that the said Board is nothing more than a mere agency or instrumentality of the State, and that therefore the State may sue in every case where the said Board might sue, contains a manifest *non sequitur*. Every city, town, and parish of the State is a mere agency or instrumentality of the State; but no one would venture to say that the Attorney General could ignore the existence of these corporations and enforce, in the name of the State, any cause of action which any of them might have.

"The legislative control over corporations of the character of this Levee Board is much more complete

than over municipal corporations proper and parishes—it made them, and can at any time abolish them, *so long as the obligations of their contracts are not thereby impaired*—but these corporations have their existence and exercise their functions by and under the Constitution and statutes of the State, and so long as these established laws remain in force *it is they which must regulate the property and other rights of said corporations and their modes of action, and the disposition of their property, and their rights to sue and to be sued.* If one of these corporations has a right of action, *the proper functionary to enforce same is the governing body of the corporation, and not the Attorney General, or the State.* * * *

"We note, in conclusion, that the membership of this Levee Board can be changed at any time by the Governor without his having to assign any reason, and that therefore the Legislature has provided ample remedy for the protection of the people of the district who are the real parties in interest."

In the opinion denying application for rehearing in the same case, the Supreme Court of Louisiana says (p. 74):

"*The Legislature vested the absolute title to the lands in controversy in the Board of Commissioners of the Tensas Levee District, with full power to sell the same on such terms as the Board might deem proper. The Legislature also vested in said Board full power to sue and be sued, and to stand in judgment, in all matters relating to their gestion and trust.* The Board of Commissioners could have brought the present suit to annul the alleged fraudulent sale and recover the lands. The Governor of the State, with his power of appointing and removing members of Levee Boards, can compel them to bring such suits as he may deem proper in the interests of levee districts.

"The General Assembly has the power at any time to authorize the Attorney General to institute actions for the use and benefit of the taxpayers and people of any particular levee district. *But as the General Assembly has vested the power to sue and be sued in the Board of Commissioners of the Tensas Levee District, and has*

vested no such co-ordinate power in the Governor or Attorney General, we are of opinion that the institution of this suit in the name of the State is unauthorized."

The Attorney General claims that the State of Louisiana is affected by the result of this litigation; that indirectly it loses by an adverse decision or by a compromise which he does not approve; and that, therefore, the State has a right to be made a party to the suit and to be heard therein. If that claim is well founded, the State would have a right to interfere with every litigation in which a municipal corporation of the State is a party to the record, and likewise in every litigation the result of which might be said to affect the material prosperity of the State. If such were the case the control of the litigation confided by State statute to the municipal bodies of the State, might be taken from these municipal bodies and placed within the control of the Attorney General at the will of the latter. Such pretension is answered by the language of the Supreme Court of Louisiana in the quotation above made. It is clear, upon reason as well as authority, that the State has no different *status* in litigation than any other body.

In NEW ORLEANS & CARROLLTON RAILROAD CO. VS. CITY OF NEW ORLEANS, 34 La. An., 429, 437, the State undertook to intervene upon a question of the right of a railroad to use the streets in New Orleans. The Court said:

"What the plaintiff is really claiming is the right to operate its railroad through the streets of New Orleans for a period of twenty-five years from 1883; and the question to be determined is whether this valuable right has been conferred upon her by her charter, either expressly or by legal implication. Because, under a particular construction of legislative acts, the State would derive certain pecuniary advantages, furnishes in our judgment, no reason why we should depart from those general rules which are universally applied in the exposition of statutes. The State is the fountain of justice, and *when mere rights of property are asserted in her favor, she subjects herself to the dominion of those laws which she has herself established as the proper standard by which similar rights, when claimed by her citizens, are regulated and determined.* Her dignity and justice re-

> quire that when a question is presented to her courts as to the extent to which she has delegated a part of her sovereign power and conferred upon individuals peculiar privileges not shared by the rest of her children, such question should be determined without consideration of any mere pecuniary advantage to the State. We at least shall determine this question precisely as if the reversion of property claimed under the statute had been stipulated in favor of any individual instead of the State."

The same principle is recognized and applied in a recent case in the Supreme Court of the United States, to which reference will later be made upon another point. We refer to *Ex-parte* LEAF TOBACCO BOARD OF TRADE OF THE CITY OF NEW YORK, 222 U. S., 578, 581. In a *per curiam* opinion denying *mandamus* to permit petitioner to intervene in a cause in the court below, it is said:

> "The merely general nature and character of the interest which the movers allege they have in the papers here filed is not in any event of such a character as to authorize them in this proceeding to assail the action of the court below. This is more obvious in this case since the act of the court which is assailed has been accepted by those who are parties to the record."

The authorities, indeed, go much beyond anything for which it is necessary for us to contend in the instant cause. The compromise in the suit at bar was made in the utmost good faith, and the contrary is not suggested. But well considered cases maintain that even if it were fraudulently made, no action would lie in the name of the State to set it aside.

PEOPLE OF THE STATE OF NEW YORK VS. FIELDS, 58 N. Y., 491, arose in the days of the Tweed regime. Defendant Fields, by fraud and collusion with the Comptroller of the City New York, obtained from the City treasury a sum of money in excess of $459,000. It was made to appear that the City of New York, and all its officers who might or could exercise any power or authority in the premises, had, with full notice and knowledge of the facts, acquiesced in the misapplication of the moneys and colluded with the defendant in protecting him from responsibility by any judicial means or remedies. Suit for the redress of the wrong was, therefore, brought in

the name of the People of the State, and recovery was had in the lower court, notwithstanding the protest of the defendant that neither the State nor the Attorney General was entitled to sue. Judge Folger, in the opinion of the court, said (p. 508):

"We think that the question is thus fairly raised in the case, whether if a municipality has a right of action for its money wrongfully received from its treasury, and refuses to prosecute for a recovery, the State may, in its character of *parens patriae*, bring action nominally for itself, but really in behalf of the individuals or body of citizens, who are presently or ultimately, to be affected by the wrongful payment and misapplication. * * *

(p. 509).

"The money of a municipal corporation has been illegally paid by its officers, and illegally received by the appellant. The municipality and its officers refuse to sue for a recovery thereof. This presents the case of a fund, held in trust for the public purposes of the members of a municipal corporate body, which has been unlawfully despoiled, and the official trustees of which, with whom is the primary right of action, refuse to act for its protection and reinstatement, and for the redress of the injury to the body of the taxpayers, present or future, who are, in a sense, the *cestuis que trust.* * * *

(P. 512).

"Such an omission of the corporation to assert its legal rights, cannot work a transfer of the fund and right of action to the plaintiffs. It may be that it was a breach of trust, and of duty, on the part of the managing body and official representatives of the municipality, but cannot operate as a forfeiture of the rights of the constituents, the *cestuis que trust*, or confer upon the plaintiffs a legal right to the money, or authorize the people, by their attorney-general, to take the place in court, in pursuing the wrong-doer and asserting a right to the money, which the law gives to the legally entitled custodian and trustee. The corporate authorities of the city of New York can no more donate, or transfer, without consideration or authority of law, the property of the city to the State, than they can to the

defendant or any stranger. Every act of that kind would be *ultra vires* and would confer no legal right upon the transferee. * * *

(Pp. 513-514).

"Most certainly the fraud and collusion of the city officials alleged, could not and did not deprive the city of New York of its property rights, or confer title to the money in dispute on the State. Such an idea would be preposterous, and is not put forth by any one. The loss to the city by the misfeasance or malfeasance of its official representatives and agents, could only be such as naturally and necessarily resulted from the omissions or actions, and not such as could form a forfeiture of legal rights; and because loss might ensue to the city, as a consequence of the neglect or wrong-doing of its servants or agents, it would by no means follow as a legal or logical sequence, that the title to the money, and what might be saved, became vested in the State, or any other body, whose representatives would be more vigilant in protecting, or pursuing and retaining it."

Upon the proposition that, if the Attorney General could intervene and appeal, it must be in the name of Levee Board. we also cite LEVERT VS. SHIRLEY PLANTING CO., 135 La., 929. Appellants were stockholders, and on pp. 932-933 it is said of their appeal:

"If the appellants had occasion to apprehend injury to the property of the corporation, their remedy was to call upon the officers of the corporation to act for the corporation in the premises; and if these officers would do nothing, then to take action themselves, *but in the name of the corporation, not in their own.* Had the appellants in this case alleged and shown that they had called upon the Board of Directors of the defendant corporation to take an appeal, and that these directors had refused, or, at any rate, failed to do so, and *had the appeal been taken in the name of the corporation,* a different case might have been presented."

IN MIOTON VS. DEL CORRAL, 132 La., 730, it is held that a single shareholder, or any number of shareholders, or the

whole number, have not the right to sue in their own names or in the corporate name to recover damages to corporate property. It is said (p. 736):

> "And we have held that the members of a corporation may not sue as individuals. SALLER vs. MOUTON, 3 La. Ann., 541. In extreme cases a stockholder may sue, as when the corporate officers, after having been called upon to sue, failed in their duty, *which allegations must be alleged and proved.*"

The Attorney General refers to LITTLE vs. WILLIAMS, 231 U. S., 335; CHAPMAN vs. LEVEE DISTRICT, 232 Id., 186, 198; and ROGERS LOCOMOTIVE MACH. WORKS vs. AMERICAN EMIGRANT CO., 164 Id., 559, (Record 4); but these cases are not at all in point in this discussion.

LITTLE vs. WILLIAMS and CHAPMAN vs. LEVEE DISTRICT arose in Arkansas under the Swamp Land Act passed by Congress in 1850, and compromise was made in 1895 between the State of Arkansas and the United States, under which the State relinquished all rights in the land in question. This compromise was approved by the State Legislature in 1897, and by Congress in 1898. These two cases go merely to the extent of holding this compromise to be binding on the Levee District, a subordinate agency of the State. Clearly it was binding, for the compromise was the result of legislative enactment. It was within the legislative power to create or abolish the levee district, and take from it the title to the lands which it held. If the Legislature could abolish the levee district, clearly it could bind the district by its compromise made by legislative enactment.

But in the instant cause the Legislature of Louisiana did not choose so to act. It invested the Levee Board with full power of control and disposition of the lands, and it results that so long as that power remains unrevoked it is within the authority of the Levee Board to convey good title to the lands or compromise the litigation respecting the same.

The like observations apply to ROGERS LOCOMOTIVE MACH. WORKS vs. AMERICAN EMIGRANT CO., 164 U. S., 559, 576, 577. It is said on page 576:

> "The State made it (the county), and could, in its discretion, unmake it, and administer such property and revenue through other instrumentalities."

We do not dispute this doctrine. In the suit at bar the State, through its legislative body, made the Levee Board and devolved upon it the duty to administer the property; but the Legislature of Louisiana has never unmade the Levee Board, nor sought to administer the lands through a different instrumentality. Certainly it does not lie within the scope of the duties of the Attorney General to unmake that body which the Legislature has created, nor destroy or take from its powers. It follows, as a logical consequence, that the acts of the Levee Board in the discharge of the duties thus expressly delegated to it by the State Legislature are valid and binding.

The Attorney General has referred to Article 58 of the Constitution of Louisiana of 1898, and has claimed that this Article shows that the State has an interest in the lands sold by the Levee Board. This Article is also contained in the Constitution of 1913, as Article 58 and was also in the Constitution of 1879 as Article 56. It is as follows:

> "The funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation, public or private; nor shall the State, or any political corporation, purchase or subscribe to the capital or stock of any corporation or association whatever, or for any private enterprise. Nor shall the State, nor any political corporation thereof, assume the liabilities of any political, municipal, parochial, private or other corporation or association whatsoever; nor shall the State undertake to carry on the business of any such corporation or association, or become a part owner therein; provided, the State, through the General Assembly, shall have power to grant the right of way through its public lands to any railroad or canal; and, provided, the Police Juries and municipal corporations may, in providing for destitute persons, utilize any charitable institutions within their corporation limits for the care, maintenance and asylum of such persons, and all appropriations made to such institutions for the purpose aforesaid, shall be accounted for by them in the manner required of officials entrusted with public funds."

This Article of the Constitution has never been construed by the Courts of Louisiana to in any manner limit or prevent the State from creating Levee Boards or Drainage Boards or other subdivisions of Government, for the purpose of aiding and assisting the State in carrying out its proper functions, and, by Legislative enactment, delegating to these political subdivisions certain powers and duties with respect to the subject matters making necessary their creation, and, in aid of the purposes under which they are brought into existence, the granting of State property to such political subdivisions in full fee title, to be sold and disposed of by such subdivisions in aid of the objects and purposes for which they are created.

In the case of BENEDICT vs. CITY OF NEW ORLEANS, 115 La., 645, the Court, on p. 656, says:

> "The Article (58) was never intended to hamper the Government of a State in the performance of public duties, such as the providing of accommodations for public functionaries. In conducting the ordinary business of the State, and availing itself to that end of the means in its judgment most suitable, the Legislature of Louisiana is as free and untrammelled as that of any other State."

This language was used with reference to lending the State's aid in the construction of a public Court House in the City of New Orleans, and it could equally be used with reference to carrying out the State's duties, under the Constitution, for the construction of levees.

Article 238 of the Constitution provides that a levee system shall be maintained in the State, etc., and Article 239 provides for the creation of levee districts with authority and such powers as are granted in the article and given by the Acts of the Legislature carrying the same into effect, to take charge of and perform the duties and functions of the government of the State to the extent of building and looking after the levee systems.

We can find no case where the right of the State to donate or transfer these lands was ever questioned.

In the case of FISCHER vs. LEVEE BOARD, 39 La. An., 453, cited by the Attorney General, which case involved the same Levee District as interested in this case, the court meant to do nothing more than is implied by the language of the decision, as quoted by the Attorney General, that:

> "This Levee Board was created by the State as one of its functionaries, charged with the duty of providing for the general welfare of the people, by protecting them from inundation, could, by any reasoning, be considered as an association or corporation distinct from, and independent of, the State *within the intendment of the prohibition contained in Article 56 of the Constitution*," etc.

In other words, within the intendment of that Article of the Constitution the Levee Board was a functionary of the State, created by the State to carry out the purposes and obligations of the State pertaining to the general welfare of its citizens, and therefore the giving of property or placing the funds and credit of the State at the disposal of such a functionary of the State, was not a violation of Article 56 of the Constitution, (1879, new Art. 58 of 1898 and 1913). This meant nothing more than that the Article was intended to refer to separate, distinct, independent public or private corporations, charged with no function of government in behalf of the State, and not acting for the State in relieving it of some of the burdens of its obligations to its citizens.

This would in no way conflict with the theory that we have advanced in this case, and that is, that, inasmuch as the State had granted to this political subsidiary or subdivision of the State, the Levee Board, the duty of carrying out a part of its obligations to its citizens, and had placed in its hands by fee simple title the property of the State to be used for that purpose, it divested itself of the power and control over the property, excepting only by and through its control of the Levee Board itself through the exercise by the Governor of his Constitutional power of removal of the membership of the Board at his pleasure, or the withdrawal by the Legislature of its Charter or grant of authority in the creation of the Board itself, the latter of course being subject to whatever contracts that might have legally been entered into by the Board during its life, or such vested interests as third persons may have obtained from it.

The other case referred to by the Attorney General, that of ORR VS. NEW ORLEANS, 50 La. An., p. 880, deals with an entirely different character of question and corporation. In that case, a municipal corporation of the State, the City of New Orleans, was undertaking to donate a large part of

its revenue to charitable and other eleemosynary institutions, and in doing so it had reduced its funds to such an extent that it was no longer in condition to properly carry on its public schools. Under these conditions, the plaintiff, a citizen and taxpayer, representing that he had children within the school ages, and that they were entitled to the benefit of public education, as provided under the Constitution of the State, and that they were being deprived of such education because of the action of the City in depriving itself of the necessary funds to maintain its public schools, by donations to the institution above referred to, sought to enjoin any further disposition of the funds of the City to such purposes and to annul the ordinances of the City under which the donations were made, among other grounds that the ordinances were in violation of Article 56 of the Constitution of 1879, being the same article as now contained in the Constitutions of 1898 and 1913 as Article 58, and the Court held that the Ordinance was a violation of Article 56 in that it was giving the funds and property of the municipality to private corporations, and the crux of the opinion was to the effect that municipal corporations, deriving their existence from the State, were included in the provisions of the Article of the Constitution, which broadly stated, referred to the funds, credit, property or things of value of the State or any political corporation thereof.

We can see no analogy between these cases cited by the Attorney General and the instant cause. If the State, because of any recognized public policy thereof, did not intend to be bound by the acts of the Levee Board, the grant of power and authority to the Levee Board should have been limited and restricted within the bounds of its intendment, but having granted to it full, complete and absolute dominion over the property transferred, it could no longer directly or indirectly control the disposition of the property so long as the proceeds thereof were directed to the purpose for which the property was transferred. It is not disputed in this case but that the proceeds both of the sale in the first instance and of the compromise in the second instance, were used in a proper manner and for the proper purposes intended by the State that it should be when the grant was made of the lands to the Levee Board.

IV.

THE STATE OF LOUISIANA IS NOT A PARTY TO THE RECORD IN THE COURT BELOW, NOR TO THE DECREE OF OCTOBER 21, 1913, DISMISSING THE CAUSE, AND HENCE IS NOT ENTITLED TO APPEAL FROM THAT DECREE.

It is a familiar rule that one who is not a party to a record and judgment is not entitled to appeal therefrom.

Bayard vs. Lombard, 9 How., 530;
Ex-parte Cutting, 94 U. S., 14;
Ex-parte Cockroft, 104 Id., 578;
Guion vs. Liverpool, London & Globe Ins. Co., 109 Id., 173;
Ex-parte Leaf Tobacco Board of Trade, 222 Id., 578, 581;
Cook vs. Lasher, 73 Fed., 701, 704, (C. C. A.);
Mayor, etc., of Vicksburg vs. Vicksburg Waterworks Co., 231 U. S., 739.

In the early case of BAYARD VS. LOMBARD, *supra*, (p. 551), it was said by the Supreme Court of the United States:

> "It is a well-settled maxim of the law, that 'no person can bring a writ of error to reverse a judgment who is not a party or privy to the record.' "

The most recent expression of opinion upon this subject in the Supreme Court of the United States reaffirms this rule. We refer to *Ex-parte* LEAF TOBACCO BOARD OF TRADE, *supra*, where it is said:

> "One who is not a party to a record and judgment is not entitled to appeal therefrom."

But even a party to a suit cannot appeal from a decree therein rendered, if he is not thereby affected. As said by Chief Justice Waite in FARMERS' LOAN & TRUST CO. VS. WATERMAN, 106 U. S., 265, 269:

> "Only parties to a decree can appeal. If a party to the suit is in no manner affected by what is decreed, he cannot be said to be a party to the decree."

It results, therefore, that the State of Louisiana, being neither a party to the suit nor a party to the decree, cannot

appeal from the decree dismissing the bill unless the mere fact that the application made April 6, 1914, by the Attorney General, for leave to intervene in behalf of the State, gives such right of appeal. It is plain that it does not. Indeed from what has already been said, it is clear that the State has no right to intervene or carry on the litigation.

The Attorney General does not contend that the State of Louisiana was a party to the litigation in the United States District Court. As we have already seen, not only was it not a party plaintiff, but the Supreme Court of Louisiana held that it was not entitled to become a party plaintiff and conduct the litigation. The Attorney General contends, however, that, while the State of Louisiana was not an actual party to the suit, it was a *quasi* party. This theory he works out by asserting that:

> "The Levee Board is really a nominal party, since the lands are the lands of the State, confided to the care of an instrumentality which is subject to the paramount authority of the State, and the State is, in a legal sense, a *quasi* party and entitled to appeal." (Petitioner's brief, 37).

The corporate existence of the Board of Levee Commissioners of the Tensas-Basin Levee District is not denied. That it held the title to the lands conveyed to the Tensas-Delta Land Company, Limited, with power to sell the same, is not disputed. But the argument seems to proceed upon the theory that the State has such beneficial interest in the lands and such right of control over the corporate body which held them as to give it the right to appeal in its own name as a *quasi* party to the suit.

If the State could not be a party plaintiff in a suit brought directly by it to set aside the sale by the Levee Board of the lands in question, as held by the Supreme Court of Louisiana, it follows that the State cannot be a *quasi* party to a suit to set aside that sale. The State cannot indirectly do that which it lacks the power to do directly.

This view is upheld by the Supreme Court of Louisiana in a recent case. We refer to LEVERT VS. SHIRLEY PLANTING Co., 135 La., 929. It was there held that the stockholders of a corporation have no pecuniary interest in its property which entitles them to appeal from a writ of seizure and sale

in an action by the president of the corporation based on a mortgage executed by the corporation and subsequently acquired by him. In the opinion of Justice Provosty it is said (pp. 931-932):

> "It is elementary in the law of corporations generally that the property which a corporation owns is its own, to be managed by it as it deems best; and that the suits which it brings, or that are brought against it, are, in like manner, its own, to be prosecuted, or defended, as it deems best; and that the individuals who compose the corporation are, legally speaking, strangers to it, and cannot interfere with the management of its affairs or with the suits that are brought by or against it, no more than they can interfere with the affairs of their next-door neighbor, or their neighbor across the street. * * *
>
> "This court has expressly held that a shareholder has not such an interest in the property of the corporation as will afford him a standing for bringing suit in his own name for injury to the property of the corporation. MIOTON VS. DEL CORRAL, 132 La., 730; 61 South, 771. *And, needless to add, if he has no interest for bringing suit, he has none for appealing.*"

Inasmuch as it was held by the Supreme Court of Louisiana, in the suit in the 126th Louisiana, that the State had "*no interest for bringing suit,*" it follows that the United States District Court and the Circuit Court of Appeals were clearly right in holding that it had "*none for appealing.*"

Counsel assert (brief for petitioner, p. 42) that the case of WILLIAMS VS. MORGAN, 111 U. S., 684, upholds the right of the Levee Board, as a *quasi* party to the cause, to take an appeal; but it is clear that the case is not authority therefor. That case involved an allowance made to trustees under a railroad mortgage for their services, and it was held that bondholders were entitled to intervene and appeal from an order making an allowance to the trustees which was claimed to be excessive. The ground of the holding is thus stated by the court (pp. 696-697):

> "As bondholders, and as interested under the second mortgage, if not under the purchasing agreement, we do not well see how the court, under the circumstances, could have refused their application. The trustees

themselves, who were the nominal complainants, were the parties interested to obtain large allowances for themselves, and could not be relied on to have them reduced."

In the instant cause these considerations do not apply. The members of the Levee Board do not assert any personal claims or interests antagonistic to their trust. Their good faith in the discharge of their duties is in no wise brought in question.

V.

No Appeal Lies From the Order Denying Leave to Intervene, and, Inasmuch as the Leave Was Denied and the State of Louisiana Never Became Party to the Cause, It Follows That No Appeal Lies From the Order Dismissing the Suit.

This case is to be disposed of upon well-settled principles. Not only was the State of Louisiana not a party to the suit, but it did not apply to become such until nearly six months after the cause was dismissed out of the District Court, pursuant to the act of compromise. The application by the Attorney General, in the name of the State, for leave to intervene, made on April 6, 1914, was addressed to the sound discretion of the District Court, and was denied by that court. No appeal lies from the order denying leave to intervene; and, inasmuch as the leave to intervene was denied, and the State of Louisiana never in fact became a party to the cause, it results, upon principles to which we have already adverted, that no appeal lies, at its instance, from the order made on October 21, 1913, dismissing the suit out of the District Court. The ruling of Judge Boarman upon this head is pointedly sustained by decisions of this Court and other Federal Courts.

Connor vs. Peugh's Lessee, 18 How., 394, 395;
Ex-parte Cutting, 94 U. S., 14, 19-22;
Guion vs. Liverpool, London & Globe Insurance Co., 109 Id., 173;
Credits Commutation Co. vs. United States, 177 Id., 311;

Re Metropolitan Railway Receivership, 208 U. S., 90, 106;
Ex-parte Leaf Tobacco Board of Trade, 222 U. S., 578;
Blaffer vs. New Orleans Water Supply Co., (C. C. A., 5th Cir.), 160 Fed., 389;
Fink vs. Bay Shore Terminal Co. (C. C. A., 4th Cir.), 144 Id., 837, 838;
Land Title & Trust Co. vs. Asphalt Co. of America (C. C. A., 3rd Cir.), 127 Fed., 1, 21, 22;
Credits Commutation Co. vs. United States (C. C. A., 8th Cir.), 91 Fed., 570, 572-574;
In re Columbia Real Estate Co. (C. C. A., 7th Cir.), 112 Id., 643;
Thomasson vs. Guaranty Trust Co. (C. C. A., 7th Cir.), 159 Fed., 126;
Jones & Laughlin, Ltd. vs. Sands (C. C. A., 2nd Cir.), 79 Id., 913;
Lewis vs. Baltimore & L. R. Co. (C. C. A., 4th Cir.), 62 Id., 218;
Hamlin vs. Toledo, etc., Co. (C. C. A., 6th Cir.), 78 Id., 664, 665;
United States Trust Co. vs. Chicago Terminal Transfer R. Co. (C. C. A., 7th Cir.), 188 Fed., 292;
Lisman vs. Knickerbocker Trust Co. (C. C. A., 6th Cir.), 211 Fed., 413;
Farmers & Merchants Bank vs. Arizona Mutual Savings & Loan Assn. (C. C. A., 9th Cir.), 220 Fed., 1.

The Act of Congress of March 3, 1891, Chapter 517 (U. S. Comp. Stat. 1901, p. 549), provides:

> "The Circuit Courts of Appeal established by this act shall exercise appellate jurisdiction to review, by appeal or by writ of error, *final decision* in the District Court and the existing Circuit Courts, in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law."

It is clear that the denial by Judge Boarman of the petition of the State of Louisiana, through its Attorney General, for leave to intervene, is not a final decision within the meaning of the Circuit Court of Appeals Act; and the authorities

above cited control the disposition of the instant cause and render necessary the denial of the writ of *mandamus* now sought.

CONNOR VS. PEUGH'S LESSEE, 18 How., 394, 395, was an action of ejectment brought in the Circuit Court. The tenant did not appear and have herself made defendant in place of the casual ejector, according to the exigency of the notice served; and at the October term, 1854, a judgment was entered against the casual ejector in the usual form. On June 5, 1855, the tenant in possession came into court for the first time and moved to set aside the judgment and execution issued thereon and to be allowed to defend the suit for reasons set forth in her affidavit. The Court refused to grant the motion, whereupon the tenant in possession prayed an appeal. Mr. Justice Grier said:

> "The tenant in possession having neglected to appear and have herself made defendant and confess lease, entry and ouster, the judgment was properly entered against the casual ejector. No one but a party to a suit can bring a writ of error. The tenant having neglected to have herself made such cannot have a writ of error to the judgment against the casual ejector.
>
> "*The motion afterwards made* to have the judgment set aside and *for leave to intervene was an application to the sound discretion of the Court. To the action of the Court on such a motion no appeal lies*, nor is it the subject of a bill of exceptions or writ of error."

Ex-parte CUTTING, 94 U. S., 14, 19-22, like the instant cause, was a petition for a writ of *mandamus* to the Circuit Court of the United States to compel that Court to allow an appeal from its decree. The opinion is by Chief Justice Waite, who says:

> "To entitle the petitioners to the writ asked for in this case, they must show that they have a clear right to an appeal which has been refused by the Circuit Court. The office of a *mandamus* is to compel the performance of a plain and positive duty. It is issued upon the application of one who has *a clear right to demand such a performance and who has no other adequate remedy.* It is never granted in anticipation of an omission of duty, but only after actual default.

"This application is for a writ commanding the Judges of the Circuit Court, or one of them, to allow the petitioners an appeal from the decrees in the cause, and a *supersedeas*. This is the only specific relief asked; and, in support of the application, it is insisted that Marie, Otis, Cutting, Jr., Cutting and Fearing, were admitted as parties to the suit March 25th, when they filed their petition therefor, and that consequently they were in a position to demand an appeal as parties. * * *

"The persons presenting the petition of March 25th never did in fact become parties, and it is apparent from the record that their present claim in that regard is an after-thought. They filed their petition to be made defendants in the suit, but it was never granted. * *

"From this it is apparent that *if one wishes to intervene and become a party to a suit in which he is interested, he must not only petition the Court to that effect, but his petition must be granted;* and while it is not necessary for him to show that he has actually been admitted by an express order entered upon the record, he must at least make it appear that he has acted or has been treated as a party. That, as we have seen, is not the case here. * * *

"Upon this state of facts, it is impossible to say that the petitioners, or any of them, have established their right to appeal as actual parties to the suit before the decree.

"*No appeal lies from the order of October 3rd, refusing them leave to intervene and become parties; for that was only a motion in the cause, and not an independent suit in equity appealable here.*

"Neither can these petitioners appeal as stockholders. *Only parties, or those who represent them, can appeal.* The stockholders do not represent the corporation, but for some purposes the corporation represents them. They are sometimes admitted as parties to a suit, for the purpose of protecting their own interests in the corporation against unfounded and illegal claims against it, but this 'remedy is an extreme one, and should be admitted by the Court with hesitation and caution.' (BRONSON VS. LACROSSE RAILROAD CO., 2 Wall., 302). It is always addressed to the sound judicial discretion of the Court. That we cannot control by *mandamus*."

GUION VS. LIVERPOOL, LONDON & GLOBE INSURANCE CO., 109 U. S., 173. Guion, claiming to have an interest in certain railway bonds which were the subject of foreclosure, filed his petition in the foreclosure suit, asking to be admitted as a party to the suit for his own protection. This petition was denied and Guion was allowed an appeal on giving bond. The appeal was dismissed for want of jurisdiction. Chief Justice Waite, in the opinion of the Court, said:

> "The petition of Guion was for leave to appeal from a decree in a suit to which he was not a party. We decided in *Ex-parte* CUTTING, 94 U. S., 14, that such an appeal could not be taken. He had applied for leave to become a party, but this leave was not given. So he is not a party to the decree from which he appealed."

The most recent expression of opinion by the Supreme Court of the United States upon this head is found in *Ex-parte* LEAF TOBACCO BOARD OF TRADE, 222 U. S., 578. This was an application for leave to file a petition for *mandamus*, prohibition and writ of *certiorari*, in order to review the decree of the lower Court carrying into effect the decree of the Supreme Court of the United States in the suit UNITED STATES OF AMERICA VS. AMERICAN TOBACCO COMPANY. The leave to file the petition was denied and the following reasons were assigned in the *per curiam* opinion (p. 581):

> "1. One who is not a party to a record and judgment is not entitled to appeal therefrom. (BAYARD VS. LOMBARD, 9 How., 530; INDIANA VS. LIVERPOOL, LONDON & GLOBE INS. CO., 109 U. S., 168; *Ex-parte* COCKROFT, 104 U. S., 578).
>
> "2. The action of the Court below in refusing to permit the movers to become parties to the record is not susceptible of being reviewed by this Court on appeal, or indirectly under the circumstances here disclosed, by the writ of *mandamus*. (*In re* CUTTING, 94 U. S., 15, and see CREDITS COMMUTATION CO. VS. UNITED STATES, 177 U. S., 311).
>
> "3. The merely general nature and character of the interest which the movers allege they have in the papers here filed is not in any event of such a character as to

authorize them in this proceeding to assail the action of the Court below. This is more obvious in this case since the act of the Court which is assailed has been accepted by those who are parties to the record. (UNITED STATES vs. UNION PACIFIC R. R. Co., 105 U. S., 262; ELWELL vs. FOSDICK, 134 U. S., 500)."

The declared views of the Circuit Court of Appeals of the Fifth Circuit on this subject are in precise harmony with the decisions of the Supreme Court of the United States above cited. BLAFFER vs. NEW ORLEANS WATER SUPPLY Co., 160 Fed., 389, is a decision of that Court. It holds that an order refusing to allow one to intervene is not an appealable order, being an exercise of discretion and not final in character; that he is left free to assert his rights in any other tribunal of competent jurisdiction, the order not being, in any sense, a determination of the merits of his claim. On page 391 it is said:

"The second ground of the motion to dismiss the appeal is based upon the fact that the intervenor failed to obtain an order permitting him to intervene and thereby making himself a party to the suit, from which it follows that he is not in an attitude to appeal from the decree entered in the cause or from the refusal of the Court to permit him to intervene. *The action of the Court in declining to make an order allowing appellant to intervene was an exercise of purely discretionary power and was not final* in its character. Appellant failing to obtain the right to intervene was left free to assert such other rights as he might possess in any other tribunal of competent jurisdiction. The order of the Court was equivalent to a denial of the application of the appellant for leave to intervene, and should not be regarded in any sense as a determination of the merits of his claim. (CREDITS COMMUTATION Co. vs. UNITED STATES, 177 U. S., 311). * * * In this case it affirmatively appears from the statement of the trial Judge that he declined to make any order upon intervenor's petition. That an appeal does not lie from the order of the Court below denying the motion in a pending suit to permit a person to intervene and become a party thereto is supported by the following authorities (citing many cases.)"

The rule of law for which we contend is recognized by the case cited by counsel in their petition for *mandamus* and *certiorari* (Record, 13). They there assume to quote from the decision of three Judges of the Eighth Circuit, in UNITED STATES VS. NORTHERN SECURITIES CO., 128 Fed., 808, as follows:

> "Nor will intervention lie after decree, unless to protect an interest which cannot otherwise be protected."

But counsel do not correctly quote either the paragraph or sentence as written by Circuit Judge Thayer in that case. What he said was this (p. 810):

> "*Applications for leave to intervene in a case after the entry of a final decree are very unusual.* They are never granted as a matter of course, and, *owing to the tendency of such applications to occasion delay and prolong the existing litigation, they ought not to be granted unless it is necessary to do so to preserve some right which cannot otherwise be protected,* or to avoid some complication that is liable to arise."

The rule of law thus declared is fatal to the intervention and appeal now sought. It is not necessary that this intervention be granted in order to preserve the rights of the State of Louisiana in the lands in question, if any such rights there be. The District Judge so returns. In paragraph 16 of his return he says:

> "I deny that petitioner's interests in the subject-matter of the aforesaid suit cannot be protected except by and through an appeal from the final decree ratifying said compromise and dismissing said suit. In my view the petitioner has no interest in the subject-matter of said suit, but if it had any, an independent suit would, without doubt, lie for the protection thereof."

This is not like the case of a fund in court of which division is about to be made, where all rights of the party applying for leave to intervene will be lost unless intervention be granted. In the suit at bar the lands are still existent; they stand of record in the name of the Land Company; and if the State of Louisiana has any rights therein, an independent suit lies in the name of the State to enforce

those rights. The distinction upon which we rely is made clear in CREDITS COMMUTATION CO. VS. UNITED STATES, 177 U. S., 311. That case brought under review the action of the Circuit Court of Appeals of the Eighth Circuit in denying the petitions for leave to intervene in three certain litigations affecting the Union Pacific Railway Company. One of the suits was for the appointment of receivers, the enforcement of certain liens and the administration of the properties. Another suit was a bill of complaint of the trustees of the first mortgage of the railway to foreclose that mortgage. The third suit was a bill by the Uuited States to foreclose the subsidy lien of the United States upon the property of the Union Pacific Railway. The Credits Commutation Company and the Combination Bridge Company asked leave to intervene, and an order was made in the Circuit Court denying the prayers for leave to intervene. Appeal was taken to the Circuit Court of Appeals, and in that court motions were made by the appellees and granted to dismiss the appeal, and thereupon an appeal to the Supreme Court of the United States was allowed. In that court a motion was made to dismiss or affirm. In the opinion of Mr. Justice Shiras it is said (pp. 314-317):

> "To show that the Circuit Court, in denying the petition for leave to intervene, was not exercising the usual discretion of a chancellor in passing upon a petition of an outside party for leave to intervene, but adjudicated the petitioners' rights asserted in the petitions, as if upon demurrer thereto, we are pointed to the language used: 'Ordered, that the prayers of the petitioners for leave to intervene herein be, and the same are hereby denied, not as a matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene.'
>
> "It is urged that the Circuit Court declined to treat the subject as of one of discretion, and elected to determine the legal rights of the petitioners, so as to preclude them from resorting thereafter to some other tribunal, and that, therefore, its judgment was a final one and properly reviewable on appeal.
>
> "We cannot accept this view of the meaning and effect of the order in question. *What was sought in the pe-*

titions was leave to intervene in a pending and undetermined cause, and that right alone was determined. The very terms used by the Court, that the facts stated were 'not sufficient to show that the petitioners, or either of them, have a legal right to intervene,' shows that what was considered was the right to intervene. That right refused, the petitioners were left free to assert such other rights as they might possess as in any other tribunal. * * *

"The question was well considered by the Circuit Court of Appeals, and we quote and adopt its statement, as follows:

" 'When such an action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such an order not only lacks the finality which is necessary to support an appeal, but it is usually said of it that it cannot be reviewed, because it merely involves an exercise of the discretionary powers of the trial Court. * * * It is doubtless true that cases may arise where the denial of a third party to intervene therein would be a practical denial of certain relief to which the intervenor is fairly entitled, and which he can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervenor's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation,

could, we think, with more propriety and with less difficulty, have been litigated by an independent bill after they had completed, or were about completing, their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petitions were speculative questions, which the lower Court, as we think, very properly, refused to consider or determine.' * * *

"*As its action* (the action of the Circuit Court) *in denying the petitions to intervene, was an exercise of purely discretionary power, and not final in its character* as respects such alleged right to connect, *we think the Circuit Court of Appeals was right in holding that the appeals could not be entertained by that Court*, and its decree, dismissing the same, is accordingly affirmed."

The above case, as reported in the Circuit Court of Appeals of the Eighth Circuit, is CREDITS COMMUTATION Co. vs. UNITED STATES, 91 Fed., 570, 572-574.

In addition to the language quoted by the Supreme Court of the United States, it is said by the Circuit Court of Appeals:

"The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to this Court, and upon the further proposition that the action of the lower Court in refusing leave to intervene is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. *The order denying leave to intervene was not 'final,' within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioner's alleged right* to form a junction with the main line of the Union Pacific Railroad, which was the substantial right asserted, *but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt.* The trial Court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint, for the reason that it refused to give the petitioners a standing in court to be heard with respect

to such question, and also refused to permit the intervening complaint to be filed and become a part of the record. None of the issues, therefore, which were tendered by the petitioner's in their intervening complaint, ever passed under judicial review in such a manner as to estop the petitioners from tendering like issues on any future occasion, because the trial Court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. * * *

"It was suggested in argument that, as the lower Court saw fit to insert a clause in its order that it had not refused leave to intervene 'as a matter of discretion,' but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial Court, by inserting such a clause in its order explanatory thereof, could not give an effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order was made. The intervening petition merely invoked the discretionary power of the Court, and it could exercise no other power in the premises, whatever the purpose of the Court or its own declaration on the subject may have been. The fact is that the lower Court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled, since the decision in McLish vs. Roff, 141 U. S., 661, that an appeal will only lie to this Court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers—except in some cases for which special provision is made by the seventh section of the act under which this Court was created (26 Stat., 826, c. 517)—it follows that the appeals cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered."

If it be said that an independent suit will not lie, we say in reply that this is only because the State of Louisiana has no legal interest in the subject-matter in controversy. If the State has no legal interest in the subject-matter of this litigation, that is an objection which applies with equal force to its petition for leave to intervene. This is pointedly held in *Ex-parte* LEAF TOBACCO BOARD OF TRADE, 222 U. S., 578, 581, to which we have called attention in Division III. of this brief.

It is urged by the Attorney General (brief, 44-45) that, inasmuch as we claim that the State is not entitled to sue, we are inconsistent in urging that the State has no right to intervene, but that the remedy, if any, is by independent suit. In this there is no inconsistency. We merely rely upon two defenses to the application for leave to intervene and appeal now made. We say *first*, that there is no right to intervene and appeal, the sole remedy, if any, being by way of independent suit; and *second*, that there is no remedy whatsoever, in the name or behalf of the State of Louisiana, either by independent suit or by intervention and appeal. for the reason that the State is without legal interest in the subject-matter, and it was so specifically held by the Supreme Court of Louisiana in the suit brought by the State against TENSAS-DELTA LAND CO., LTD., reported in 126 La., 59.

It is said by petitioner that the proper practice is for the District Court to grant an appeal in every case, leaving the question of the appealability of the order for the decision of the Court of Review. (See petition for *mandamus*, R. 12). But it seems clear, upon reason as well as authority, that where no appeal lies the District Judge may refuse to allow it.

> *In re* Durrant (C. C.), 84 Fed., 317;
> Southern Building & Loan Association vs. Carey (C. C.), 117 Fed., 325, 327.

It is idle to grant an appeal where, consistently with the recognized rules of law, the appellate court can do nothing but dismiss the appeal when perfected. And so it appears to have been an ordinary practice for the lower Court to deny an appeal if in the opinion of that Court the applicant is not entitled thereto, leaving him to apply for a review of the decision through the medium of petition for the writ of *mandamus*. This practice was pursued in the leading

case, *Ex-parte* CUTTING, 94 U. S., 14, 19-22, to which reference is above made, and in FINK vs. BAY SHORE TERMINAL Co., (C. C. A., 4th Circuit), 144 Fed., 837, 838.

VI.

THE LEVEE BOARD ACTED IN UNQUESTIONED GOOD FAITH IN ENTERING INTO THE COMPROMISE OF JULY 11, 1913; AND, INASMUCH AS THE PUBLIC INTERESTS IN THESE LANDS WERE CONFIDED BY LAW TO THAT BODY, IT IS CLEARLY WITHIN THE DISCRETION OF THE TRIAL COURT TO DENY TO ALL OTHERS THE RIGHT TO INTERVENE AND APPEAL.

The petition for leave to intervene and appeal proceeds, apparently, upon the ground that the Levee Board has failed in its duty in that it has seen fit to compromise the litigation, whereas in the opinion of the Honorable Attorney General the same ought to have been prosecuted to final conclusion. But the good faith of the Levee Board in entering into the compromise of July 11, 1913, is not questioned. This is shown affirmatively in the return of the District Judge, as well as by the entire absence from the record of any claim which reflects upon the honesty or good faith of the Levee Board. Neither in the objections of the Attorney General to the dismissal of the suit (R. 62-63), nor in the petition for leave to intervene and appeal (R. 5-8), nor elsewhere in the record, is it claimed that the Levee Board acted otherwise than in the most perfect good faith and in the exercise of the best judgment of its members in entering into the act of compromise.

In paragraph 19 of the return of the District Judge it is said (R. 32):

> "In the exercise of its best judgment, and with much apparent deliberation, the Levee Board has seen fit to compromise the existing suit, and in my opinion it had full power and authority so to do. That the Levee Board in entering into the compromise acted in the utmost good faith, and as it deemed for the interest of the taxpayers and inhabitants of the Levee District, was not questioned in any showing made by the Honorable Attorney General before me."

In paragraph 26 of the return the District Judge says (R. 36-37):

> "It does not appear from anything shown in the court below that the compromise was in any respect against the best interests of the Levee District, nor that the Levee Board was wrong in its conclusion that the act of compromise, carrying with it the payment of $100,000 was fitly to be preferred to the hope of gaining, balanced by the fear of losing, in said litigation. From the act of compromise it appears that on a former occasion—viz., on or about the 9th day of July, 1903—an act of compromise with reference to the lands mentioned in the the bill of complaint had been entered into by said Levee Board, acting through its president, W. H. Holloman, under authority of resolution of said board, dated the 9th day of July, 1903, with the Tensas-Delta Land Company, Limited, and such former act of compromise was, by the act of compromise of date July 11, 1913, ratified and confirmed. Under all the facts appearing in the record it might well be deemed by the members of said Levee Board to be a prudent act, in the interest of their constituents, to enter into the compromise aforesaid, and thereby acquire for the Levee District the benefits thereof, and it has at no time been claimed before me by the Honorable Attorney General, or by anybody else, that said members of the Levee Board acted otherwise than in the utmost good faith in the compromise so made by them."

Under these circumstances, it was clearly within the discretion of the trial Judge to deny to the State of Louisiana leave to intervene and appeal, especially when application for such leave was not made until nearly six months after the final decree of dismissal.

Land Title & Trust Co. vs. Asphalt Co. of America (C. C. A.), 127 Fed., 1, 21, 22;

Fink vs. Bay Shore Terminal Co. (C. C. A.), 144 Fed., 837, 838;

Thomasson vs. Guaranty Real Estate Co. (C. C. A.), 159 Fed., 126.

In LAND TITLE & TRUST CO. VS. ASPHALT CO. OF AMERICA, 127 Fed., 1, 21, 22 (C. C. A., 3rd Circuit), it is said by Circuit Judge Gray:

"The application to intervene, in both the first and third appeals, was broadly upon the ground that the party by whom the interests of the intervenor should be represented (in the one case the Land Title & Trust Company, trustee, and in the other the receivers), was not representing such interests properly. No individual or separate interest of the petitioner, which could not otherwise be adjusted at all, and would therefore be lost if intervention were denied, was presented in the court below in either of the petitions which are the subjects of the first and third appeals. *If the trustee and the receivers act honestly and in good faith, the rights of the appellant are protected.* The trustee has important interests committeed to him by his *cestuis que trustent* in the litigation before the Court, and the Court was right, both as to the trustee and the receivers, in exercising its discretion to protect them from interference, in the carrying on of the litigation and the administration of the funds in hand, as attempted by appellant's petition for intervention. *If the trustee had acted in bad faith, or fraudulently, it was open to the appellant to proceed by original bill,* and if the receivers have been guilty of malfeasance in office, the proper remedy is an application to the Court below by the appellant or other party in interest, for their removal and the substitution of others."

In FINK VS. BAY SHORE TERMINAL CO., (C. C. A., 4th Circuit), 144 Fed., 837, 838, application was made by *mandamus* to compel the Court below to permit a bondholder to intervene and appeal. In the opinion of Circuit Judge Goff it is said:

"No special cause was assigned by him, as a reason why such permission should be granted, save only that his rights were not fully protected by the decree of which he complained. No fraud is charged against the trustee, no collusion between the trustee and other bondholders, or other parties, is alleged, and no cause is shown by petitioner from which the Court could find that the refusal of the trustee to appeal from said decree was not entirely proper and justified by the interests represented by it. Under these circumstances the Cir-

cuit Court, exercising its judicial discretion, refused the request of petitioner, and declined to permit him to become a party to said cause.

"It was not the positive duty of the Court below to permit the petitioner to become a party to said cause. That Court has not declined to discharge any duty imposed upon it, so far as the petitioner is concerned, but it has held that *as he is already represented in said litigation by the party duly selected for that purpose—the trustee in the mortgage, it would not be proper under the rules of procedure applicable to such matters, to permit him individually to intervene, and antagonize the trustee* in the discharge of his common duty to all the bondholders. No appeal lies from such discretionary action of the court below. To hold otherwise would create inextricable confusion in judicial proceedings, and render it almost impossible to terminate litigation of the character involved in this cause. Petitioner not having been made a party, was not entitled to an appeal from the decree complained of, and, not being so entitled, the writ of *mandamus* must not issue compelling the Court below to grant him an appeal."

In ELWELL VS. FOSDICK, 134 U. S., 500, a holder of $14,000 out of $955,000 of railroad bonds, secured by mortgage, was permitted by the Circuit Court to appeal to the Supreme Court in the name of the trustee in the mortgage, from a decree which it was claimed affected the interest of such holder. It appearing that some time before the appeal was taken the trustee had executed a release of his right to appeal and of errors in the decree, and that the Court had in the decree found that there was no proof showing that the trustee had not acted in good faith, it was held that the release bound all the bondholders represented by the trustee; that the appeal was the appeal of the trustee; and that, on motion of the appellee, it must be dismissed.

In the petition for *mandamus* (p. 24) counsel quote an excerpt from the opinion of the Supreme Court of Louisiana in STATE VS. TENSAS-DELTA LAND COMPANY, LIMITED, 126 La., 59, 72, as follows:

"If the governing body of one of these corporations fails in its duty to bring a suit which clearly it ought to

bring, the Courts may—only, however, under highly exceptional circumstances—allow any citizen or taxpayer of a district to bring the suit; and in such a case the same privilege might for the same reason be extended to the State. But nothing of that kind is pretended in this case. There is no suggestion that the Board of Commissioners of the District has failed to bring suit, or is unwilling to do so. In fact, this Court knows the contrary from the public prints."

The passage thus quoted, it is evident, has reference to a case where the Levee Board, acting fraudulently and collusively, omits to bring suit to redress a wrong sustained by it. So considered, it is in precise harmony with the decisions of the Federal Courts, to which attention is above called. In such case—or as the State Supreme Court expresses it, "*only, however, under highly exceptional circumstances*"—a citizen or taxpayer may bring suit; and it is suggested that perhaps the State may do so. But clearly the suit at bar does not present such a case. The Levee Board has not fraudulently or collusively refused or omitted to act. It has in fact acted. In the exercise of its best judgment and with the utmost deliberation and good faith, the Levee Board compromised the pending suit.

LAND TITLE & TRUST CO. VS. ASPHALT COMPANY OF AMERICA, *supra*, and the other cases herein cited, are authority to the following effect:

First.—If the Levee Board acted honestly and in good faith in entering into the act of compromise, the public is fully protected, and no right of intervention in others exists.

Second.—If the Levee Board acted in bad faith or fraudulently in entering into the act of compromise, it is open to one who is injured thereby to proceed by original bill, and hence he is not entitled to insist upon the right to intervene.

BOARD OF LIQUIDATION OF THE CITY DEBT OF NEW ORLEANS VS. LOUISVILLE & NASHVILLE RAILWAY CO., 109 U. S., 221, is also a case to the point that the compromise between the Levee Board and the Land Company will not be disregarded in this court. There a question arose on the presentation of an order by the authorities of the City of New Orleans to dismiss a suit in the Supreme Court of the United States, in which the city was plaintiff in error. The order was based on a compromise between those authorities

and the railroad company, which the Board of Liquidation, intervening in the Supreme Court, alleged to be *without authority and fraudulent*, the Board of Liquidation itself claiming the land in controversy and that the city had no power, by its compromise, to dispose of the same. The Supreme Court did not disregard the compromise or the order of the city to dismiss the case, but thought the dispute as to the authority of the Mayor and Council presented questions too important to be settled summarily on motion, and ordered the motion to be continued to a subsequent term of the Supreme Court, when the appeal would be dismissed, in accordance with the stipulation, unless the Board should begin and prosecute without unnecessary delay in some court of competent jurisdiction an appropriate suit to set aside the compromise. Such independent suit was thereupon begun, and when the same was decided in favor of the action of the Mayor and Council, the suit was dismissed in the Supreme Court on the basis of the compromise order.

The above case is explained and followed in the case of DAKOTA COUNTY VS. GLIDDEN, 113 U. S., 222, 226, and points out the only course which it is within the province of the State of Louisiana to pursue—if, indeed, it is entitled to pursue any legal remedy whatsoever—because of the alleged grievances set forth in the petition. This Court assuredly will not, upon application for writ of *certiorari* to review the denials of the courts below, disregard the act of compromise. If the State of Louisiana desires to attack the compromise in an effort to set aside the same, such attack can be sustained, if at all, only in case it charges and proves that the act of compromise was fraudulently and collusively made between the Levee Board and the Land Company, and that serious injury has thereby resulted to the State. It is possible that a taxpayer of the Levee District might be able to maintain a suit upon such theory; but as the good faith of the Levee Board stands out in bold relief upon this record, there is no room for the application of this theory in the instant cause.

VII.

THE CIRCUMSTANCE THAT DURING THE PENDENCY OF THE SUIT BROUGHT BY THE LEVEE BOARD, THE ATTORNEY GENERAL WAS SOLICITOR OR COUNSEL OF RECORD FOR THAT BODY, DOES NOT GIVE HIM THE RIGHT TO APPEAL THE CAUSE OR CARRY ON THE LITIGATION CONTRARY TO THE WILL OF HIS CLIENT, THE LEVEE BOARD.

When the motion was made by the Land Company in the court below to dismiss the cause, the Attorney General made written objections thereto. These were not presented in behalf of the State, but were the objections of "R. G. Pleasant, Attorney General, State of Louisiana, and Attorney of Record for Complainant" (R. 63).

Subsequently, when application was made for leave to intervene and appeal, it was made by the Attorney General in the name and ostensibly in behalf of the State of Louisiana. No authority, however, to make such application is shown, save such as may be inferred from the fact that Mr. Pleasant filled the office of Attorney General or appeared as solicitor or counsel for the Levee Board in its suit.

Whether the objections to the settlement of the suit be treated as objections of the State of Louisiana or the objections of the solicitor or counsel for the Levee Board, they are equally futile. By the act of compromise the suit was settled. There is no subsisting cause of action in favor of the Levee Board against the Land Company. Hence, it is not within the power of the Attorney General to carry on the litigation, and no right of appeal exists.

SAN MATEO COUNTY VS. SOUTHERN PACIFIC RAILWAY CO., 116 U. S., 138, was a suit by the county against the railroad company to recover taxes. Judgment was rendered upon demurrer in favor of the defendant, and the suit dismissed. Thereupon a writ of error was sued out to review the case in the Supreme Court. After the suit was docketed in the Supreme Court, the railroad company paid into the treasury of the county the entire sum claimed by the county to be due. Notwithstanding the settlement between the parties, the attorneys of record for the county proceeded to carry on the suit. This was for the apparent reason that the suit was a test case upon the decision of which other

causes depended. The Court entertained a motion to dismiss the writ of error made by counsel specially appointed by the Board of Supervisors of the county for that purpose. Upon the suggestion that counsel of record desired to oppose the motion, an order was made that notice be given to them to appear and show cause against it if they desired to do so. But the motion being heard, the writ of error was dismissed in the Supreme Court. The ground of dismissal is said by the Supreme Court to be:

> *"For the reason that there is no longer an existing cause of action in favor of the county against the railroad company."*

There is no longer a dispute between the parties to the suit in the District Court. By the act of compromise of July 11, 1913, that dispute has been ended, and the conveyances made November 9, 1898, by the Levee Board to the Land Company have been ratified and confirmed.

If *mandamus* should be granted and the cause heard in the Circuit Court of Appeals on appeal from the decree made by Judge Boarman dismissing the suit, it would be impossible for that Court on the record thus made up to grant any relief against the express act of the Levee Board ratifying the sale and consenting to the dismissal of the suit. No relief could be granted against the act of the Levee Board in ratifying the sale and consenting to the dismissal of the cause unless fraud in the compromise were shown, and, as we have seen, there is not even a pretense that the Levee Board, in making that compromise, acted in bad faith.

Upon the record as it now stands the case as presented by the Honorable Attorney General to this Court is a moot case, involving no real issue or controversy between the parties litigant. The rule in such case is that no appeal will be allowed, or, if appeal be taken, it will be dismissed in the appellate court.

Little vs. Bowers, 134 U. S., 547;
California vs. San Pablo, etc., Railroad Co., 149 Id., 308;
Mills vs. Green, 159 Id., 651, 653, 657, 658;
New Orleans Flour Inspector vs. Glover, 160 Id., 170;
Kimball vs. Kimball, 174 Id., 158, 161;
American Book Co. vs. Kansas, 193 Id., 49;

Jones vs. Montague, 194 Id., 147;
Fisher vs. Baker, 203 Id., 174;
Lewis vs. Wyman (C. C.), 168 Fed., 756, 758, 759.

In Little vs. Bowers, 134 U. S., 547, 557, it is said:

> "It is well settled that when there is no actual controversy involving real and substantial rights *between the parties to the record*, the case will be dismissed."

In CALIFORNIA VS. SAN PABLO, ETC., RAILROAD CO., 149 U. S., 308, while a writ of error was pending to reverse a judgment for the defendant in an action by the State to recover sums of money for taxes, the defendant offered to the plaintiff and deposited in a bank to its credit the amount of those sums with penalties, interest and costs. This by the statute of the State had the same effect as actual payments and receipt of the money. This fact as to the tender and deposit was admitted by the Attorney General in his brief. Mr. Justice Gray, in the opinion of the Court said (pp. 313, 314):

> "Upon the fact most properly and frankly admitted in open court by the Attorney General of the State of California, there can be no doubt that this writ of error must be dismissed because the cause of action has ceased to exist. Any obligation of the defendant to pay to the State the sums sued for in this case, together with interest, penalties and costs, has been extinguished by the offer to pay all these sums and the deposit of the money in a bank which, by a statute of the State, have the same effect as actual payment and receipt of the money. And the State has obtained everything that it could recover in this case by a judgment in this court in its favor. The duty of this Court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it. When in determining such rights it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the Court is not empowered to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipu-

lation of parties or counsel, whether in the case before the Court or in any other case, can enlarge the power or affect the duty of the Court in this regard."

In the latter cases in the Supreme Court of the United States to which we have referred above, there is quoted with approval the rule as declared by Mr. Justice Gray in MILLS vs. GREEN, 159 U. S., 651, 653:

> "The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower Court, and without any fault of the defendant, an event occurs which renders it impossible for this Court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the Court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact when not appearing on the record, may be proved by extrinsic evidence."

Reliance is had by the Attorney General in his petition upon Act No. 3 of the Extra Session of the Legislature for the year 1910. This act makes it the duty of the Attorney General of the State of Louisiana, upon request of the Governor, to represent any political agency or subdivision of the State in any suit in any court, involving title to any land or real property belonging to any such political agency. The act reads as follows:

> "That it is hereby made the duty of the Attorney General of the State, upon the request of the Governor to represent the State or any political agency or subdivision thereof, in any suit in any court involving title to any land or real property belonging to the State of Louisiana or any of its political agencies or subdivisions, whether the title to said land or real property is vested in or appears in the name of the State or in the name of any of its political agencies or subdivisions."

The above act, it will be noted, merely gives the Attorney General, upon request of the Governor, power to act as counsel for the State, or any subdivision of the State, in land litigations. Whatever power the Attorney General has, he derives from some statute of the State.

Railroad Tax Cases (C. C.), 136 Fed., 233.

As was said in STATE OF LOUISIANA VS. GRAHAM, 25 La. Ann., 434:

> "The Attorney General is not the State, but only the counsel for the State. His agreement to acquiesce in a judgment is not the acquiescence of the State; nor does it bind a succeeding Attorney General not to take an appeal where he believes it to the interest of the State to do so and the time for appealing has not elapsed."

This proposed intervention is in form the intervention of the State of Louisiana. In reality it is the intervention of the Attorney General, for that officer assumes to take this action upon his own motion, and not by the direction of any higher State authority. If the Attorney General can continue this litigation against the will of the Levee Board, it logically follows that the ultimate power of disposition of the lands rests in him, not in the Levee Board, for to continue the suit is to rescind the act of compromise into which the Levee Board has entered.

By his act in seeking to continue the litigation, the Attorney General therefore arrogates to himself the ultimate authority over these lands, an authority which it has been solemnly adjudged by the Supreme Court of Louisiana the State itself does not possess. If these pretensions be the law, then truly the servant is greater than the master.

This contention, however, finds no support in judicial precedent.

In SMITH VS. VICKSBURG, S. & P. R'Y Co., 112 La., 985, a compromise was entered into between plaintiff and defendant and the attorneys of the plaintiff attacked the compromise on the ground that it was made in bad faith and by collusion. The Court said:

> "Defendant is to be considered as any other third person not prohibited by law from entering into a compromise with its creditors. The moral side of the question is not before us, nor the consideration of that which

a careful business man, anxious to see that every one receive his own, would have done under similar circumstances. But this does not create a legal tie between the attorneys here and the defendant company. * * *

" 'We know of no law giving an attorney-at-law a privilege on a judgment not yet in existence, and no law to compel a party to prosecute a suit to a judgment in order that the attorney in the suit may obtain and enforce a privilege on the said judgment for his professional services. The plaintiffs having compromised their suit against the defendants (which they had a right to do) and demanded its dismissal, it was at an end, and there is no suit in which an intervention can be maintained.' "

Citing RIND vs. HUNSICKER, 24 La. Ann., 572.

It will be borne in mind that after the act of compromise was made, and under date of July 19, 1913, the secretary of the Levee Board, by order of that body, wrote to the Attorney General instructing him, as attorney representing the Board, to dismiss the suit of BOARD OF LEVEE COMMISSIONERS OF THE TENSAS-BASIN LEVEE DISTRICT vs. TENSAS-DELTA LAND COMPANY, LIMITED, No. 694 on the docket of the United States District Court for the Western District of Louisiana, at the cost of plaintiff. (See letter in transcript, pp. 70-71). The question presented is, therefore, analogous to that presented in IKERD vs. BORLAND, 35 La. Ann., 337, 338, where it is said by the Court:

"The right here asserted is not merely to resist the dismissal of an appeal taken by the client, but actually to take an appeal by giving bond in the name of his client against the latter's will and orders."

The Supreme Court of Louisiana did not uphold the right asserted, but declared that an attorney-at-law who has been discharged by his client cannot, against the will and orders of the latter, give bond and prosecute an appeal in his name, and that an appeal so taken will be dismissed on motion of the client.

In the later case, VOELKEL vs. SUCCESSION OF AURICH, 118 La., 526, it is held that where an attorney for a litigant moves, as such attorney, for an appeal from a judgment against his client, and it is not pretended that the attorney

personally has any appealable interest, the appeal will be dismissed, as the Court is obliged to notice, of its own motion, the absence of the proper parties, since it has no authority to adjudicate the rights of persons who are not before it, or of persons who have no rights before it. The converse of this proposition is recognized in KEOUGHAN VS. OIL CO., 116 La., 773, where it is held that after a judgment an attorney-at-law, under the general authority from his client to act in the case, is without authority to make a gratuitous waiver of appeal.

If an appeal lies from the decree entered by Judge Boarman dismissing the bill, that appeal, under the foregoing authorities, lies at the instance of the Levee Board, and no one else. It is evident, however, that the Levee Board is not entitled to appeal, inasmuch as the decree was entered with its consent. No appeal having been taken by the Levee Board, in no event will counsel be heard in its behalf in the Appellate Court. This principle is recognized in FITCHIE VS. BROWN, 211 U. S., 321, 328, 329. In that case executors were parties to the action, but did not appeal. Counsel for the executors claimed the right, however, to be heard in the Supreme Court. Mr. Justice Peckham, in the opinion of the Court, said:

> "The counsel for the executors of the testator, appellees herein, was permitted in this court to file a brief and was heard orally on the argument before us, although no appeal from the decree had been taken by the executors. This Court stating, however, that it would thereafter decide whether counsel for executors had any right to be heard to contend against the decree of the Court below. * * *
>
> "We are of opinion that counsel for the executors had no right to appear and be heard against the decree, no appeal having been taken from it by his clients."

VIII.

THE LAW FAVORS COMPROMISE OF DISPUTED CLAIMS AND THE CIVIL CODE OF LOUISIANA MAKES EXPRESS PROVISION THEREFOR.

Divers claims of the respective parties were in dispute between them in the court below. The Levee Board filed its bill seeking to rescind the sale to the Land Company, made November 9, 1898, setting up, as grounds therefor, fraud in the sale, disguised donation and lesion. The Land Company denied all charges thus made and insisted upon the validity of the sale.

While the cause was pending for trial on the merits, the parties to the suit saw fit to compromise the same. In thus entering into the act of compromise, they dealt with each other on terms of equality. They held no relation of trust or confidence one to the other. Each had knowledge, or the opportunity to acquire knowledge, of every fact bearing upon the validity of their respective claims. A compromise made under such circumstances is within the power of the parties and favored by the Courts and invariably upheld by them.

Hennessy vs. Bacon, 137 U. S., 78;
Cleveland vs. Richardson, 132 U. S., 318, 329;
Hager vs. Thompson, 1 Black, 80;
Chicago & Northwestern Railway Co. vs. Wilcox (C. C. A.), 116 Fed., 913, 914.

In HENNESSY VS. BACON, 137 U. S., 78, 85, in the opinion of the Court, by Mr. Justice Harlan, it is said:

> "It is the case of the compromise of a disputed claim, the parties dealing with each other upon terms of perfect equality, holding no relation of trust or confidence to each other, and each having knowledge, or having the opportunity to acquire knowledge, of every fact bearing upon the question of the validity of their respective claims. (Cleveland vs. Richardson, 132 U. S., 318, 329). Such a settlement ought not to be overthrown, even if the Court should now be of opinion that the party complaining of it surrendered rights that the law, if appealed to, would have sustained."

The rule is thus stated by Circuit Judge Sanborn in the opinion of the Circuit Court of Appeals of the Eighth Circuit, in CHICAGO & NORTHWESTERN RAILWAY CO. VS. WILCOX, 116 Fed., 913, 914:

> "The policy of the law has always been to promote and sustain the compromise and settlement of disputed

claims. It loves peace, hates broils and dissensions and discourages the prolongation of litigation and the revival of controversies which have once been closed. The judgment of a Court settles the claims submitted to it and estops the parties from again litigating them after they have been adjudicated. In the absence of fraud or mistake, executed agreement of settlement of an unliquidated disputed claim constitutes as conclusive and as effectual an estoppel against the parties to the compromise from again litigating the claim thus settled as the final judgment of a Court of competent jurisdiction to the effect that the rights of the parties are as they are set forth in the agreement, and such a contract is always upheld by the Courts."

The Civil Code of Louisiana defines a transaction or compromise and makes specific provision for ending lawsuits by the execution of such instruments as that now before the court.

Article 3071 of the Civil Code reads:

"A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.

"This contract must be reduced into writing."

Thus it is seen there are three elements which go to make up a transaction or compromise: There must be differences between two or more persons in respect of which a lawsuit is contemplated or exists or may be brought; the parties must agree upon the terms of adjusting such differences; the contract must be reduced to writing. The document presented to the Court below, constituting the act of compromise of July 11, 1913, is correct in form, and embraces every element which goes to make up a transaction or compromise within the above definition of the Louisiana Civil Code.

Litigation was pending between the parties. They agreed, after thorough discussion, to adjust their differences. They reached an amicable agreement which each was willing to accept and preferred to the hope of gaining, balanced by

the danger of losing. Complainant was willing to accept $100,000 and ratify and confirm defendant's title to the property in controversy. Defendant was willing to give the $100,000 and have its title ratified and confirmed. The contract of compromise was reduced to writing and executed before a Notary, with two witnesses.

Who, then, has the right to enter into a contract of compromise, or make a transaction of this character? Article 3072 of the Civil Code of Louisiana reades as follows:

> "A man to transact must have the capacity to dispose of the things included in the transaction."

Some of the powers vested by statute in the Levee Board have already been noted in Division III. of this argument. We have there seen that the title to the lands was vested by the State of Louisiana in the Levee Board; that there was likewise conferred upon the Levee Board the power to alienate without limit; and that the Levee Board was also invested with the authority to sue and be sued in its corporate name.

The power to alienate the lands without limit necessarily involves the power to compromise a pending suit respecting the lands. The case is brought within the direct terms of Article 3072 of the Civil Code, which declares that a person, in order to transact must have the capacity to dispose of the things included in the transaction.

Again, as we have seen, Section 3 of Act 59 of the Laws of 1886, creating the Levee Board and defining its powers, expressly invests it with power to sue, and this necessarily implies the power to compromise and end the suit begun. We venture to say that the power to begin and conduct a suit, without the power to end it, never yet was conferred upon a corporate body.

The power to compromise litigation follows by necessary implication from the power to sue and defend, in the case of municipal or public corporations just as in others.

> Board of Commissioners of Drislow County vs. Tollman (C. C. A., 4th Cir.), 145 Fed., 753, 772.

The Civil Code declares what may be embraced within the terms of a transaction or compromise. Article 3073 reads:

"Transactions regulate only the differences which appear clearly to be comprehended in them by the intention of the parties, whether it be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them.

"The renunciation, which is made therein to all rights, claims and pretensions, extends only to what relates to the differences on which the transaction arises."

This article, it will be perceived, provides for special compromises wherein the parties adjust particular differences that exist between them as contra-distinguished from general compromises provided for by Article 3083 of the Code, wherein parties compromise generally on all differences which they may have had with one another, the titles which they then know nothing of and which are afterwards discovered, etc.

In the particular instance submitted to the Court below, the compromise comes within the terms of Article 3073 above quoted, and is intended to, and does, clearly adjust and settle, as therein stated, all the differences existing between the parties as set forth in the bill of complaint and amended bills of complaint filed in the suit, and forever sets at rest all questions relating to the validity of the titles of the Tensas-Delta Land Company, Limited, to the lands situate in the eight parishes mentioned in the bill.

Article 3078 of the Civil Code declares the effect of such a compromise. It reads:

"Transactions (compromises) have, between the interested parties, a force equal to the authority of things adjudged. They cannot be attacked on account of any error in law or any lesion. But an error in calculation may always be corrected."

The term "thing adjudged" is defined by the Civil Code of Louisiana, Article 3556, paragraph 31, as follows:

"Thing adjudged is said of that which has been decided by a final judgment, from which there can be no appeal, either because the appeal did not lie, or

> because the time fixed by law for appealing is elapsed, or because it has been confirmed on the appeal."

The Civil Code makes provision for the rescission of a transaction or compromise, but it may not be done in the manner attempted by the Attorney General in the instant cause. Article 3079 reads:

> "A transaction may be rescinded notwithstanding, whenever there exists an error in the person or on the matter in dispute. It may likewise be rescinded in the cases where there exists fraud or violence."

Nowhere in the record in the suit at bar is it claimed or intimated that there exists an error on the matter in dispute, or that there exists any fraud or violence in the consummation of the transaction. In such case only would there exist a reason in law for setting aside the transaction or compromise, and then it could be done only at the instance of one of the parties thereto, or some one having a legal interest therein.

IX.

The Fact That the Bill of Complaint Charges Fraud in the Sale Made by the Levee Board on November 9, 1898, Does Not Take Away the Right of the Levee Board to Compromise the Suit.

In its bill of complaint and amended bills of complaint the Levee Board sought to avoid the sale made to the Land Company on November 9, 1898, charging fraud in the sale, disguised donation and lesion. The objections of the Attorney General to the dismissal of the suit (Record, 62-63), and likewise his petition for leave to intervene and appeal (Record, 5-8), assume that there was in fact fraud in the sale made by the Levee Board in the year 1898, and from this it is argued that the parties ought not to be permitted to compromise a fraud. No such facts were shown before the District Judge. On the contrary, it appears from the record that all charges of fraud or wrong-doing were denied by defendant Land Company under oath in an answer filed in support of the demurrer, which answer appears on pages

131 to 141, inclusive, of the printed record in this cause, and was verified by the Honorable F. G. Hudson, late of Monroe, La., now deceased, who was then acting as the duly appointed legal agent of the Land Company.

It thus appears that fraud in the sale was charged by complainant and denied under oath by defendant; and it is gravely argued by the Attorney General that, fraud being charged, the compromise cannot stand, for the reason that it is against public policy to allow the compromise of a fraud. If the mere fact that fraud is charged, although not proved, prevents the compromise of suits, it results that a large proportion of the suits begun in our various courts, State and Federal, are placed beyond the possibility of compromise by mutual agreement of the parties, because nothing is more common in litigation than for a party conceiving himself to be aggrieved, to charge fraud against his adversary.

The Attorney General assumes in his objections and petitions to declare in what the public policy of Louisiana consists. But, as said by the Supreme Court of the United States in the GIRARD WILL case, the public policy of a State is to be found in its Constitution, laws and judicial decisions, and we are not to look beyond those to general considerations of supposed public interests. It is added by Mr. Justice Story, in the opinion of the Court:

> "The question what is the public policy of a State and what is contrary to it, if inquired into beyond these limits, will be found to be one of great vagueness and uncertainty and to involve discussions which scarcely come within the range of judicial duties and functions and upon which men may and will complexionally differ."
>
> VIDAL VS. GIRARD'S EXECUTORS, 2 How., 127, 197, 198.

Confining, then, the consideration of this question of public policy to what is found in the Constitution, statutes or judicial decisions of Louisiana, it will be seen that the contention that this compromise is against the public policy of the State is wholly destitute of foundation. We are aware of nothing in the Constitution, statutes or judicial decisions of Louisiana which takes from the Levee Board and places in the Attorney General the ultimate power of disposition of these lands. On the contrary, the statutes of Louisiana expressly vest in the Levee Board the title to

these lands, the power without limit to alienate the same, and the power to sue in respect thereto.

Moreover, the Civil Code of Louisiana expressly contemplates that a transaction or compromise may embrace and settle differences between the parties, even though fraud is charged. Article 3080 is as follows:

> "A transaction may also be rescinded, when it has been made in execution of a title which is null, unless the parties have expressly compromised on the nullity."

This is a negative pregnant and intends the affirmative. A common instance of a title which is null is the case where the title is based on fraud. The clear intendment of this article is that, if the nullity charged or existing grows out of fraud, and with full knowledge and appreciation thereof, the parties expressly compromise on the nullity, the transation or compromise is effective in law in like manner as if made in respect of any other matter of difference.

In Russ vs. Union Oil Co., 113 La., 196, 205, it is said:

> "There is no rule of law, morals or ethics which denies to the ordinary citizen the right to compromise, with a person asserting it, a claim against him for damages; * * * and, when the compromise is effected in the manner provided by law, it has the force of the thing adjudged and cannot be attacked collaterally, or for error of law or lesion, in a direct action."

Again in Turregano vs. Barnett, 127 La., 620, it is said:

> "A settlement of business transactions where, with full knowledge of all material facts, money is accepted and a receipt in full given, will not be disturbed, in the absence of allegation and proof of error or fraud."

The Louisiana case most nearly parallel to the case at bar is State vs. Hackley, Hume & Joyce, 119 La., 482. Suit was brought by the State of Louisiana against Hackley, Hume & Joyce to recover lands in Tangipahoa Parish. It was charged that the lands had been fraudulently entered and patents therefor from the State fraudulently procured. The District Attorney was authorized by the Governor to bring suit, and brought the same accordingly. Subsequently

a tentative compromise was entered into between Hackley, Hume & Joyce and the Governor, wherein it was proposed amicably to adjust the issues in suit and settle by compromise the title to the lands in consideration of the payment to the State of the sum of $27,447.12. This proposition it was proposed to submit to the General Assembly at its session of 1908. The District Attorney refused to stay proceedings in the suit at the request of the Governor, for reasons sufficient unto himself. Whereupon the Governor requested the Attorney General to file a motion to stay the proceedings until the Legislature might have opportunity to pass upon the proposed compromise. This motion was made and granted by the trial Court, and thereupon the District Attorney applied to the Supreme Court for writs of *certiorari* and *mandamus*, insisting upon his authority to continue in the prosecution of the suit brought by him in the name of the State, notwithstanding the stay obtained by the Attorney General. The Supreme Court denied the writ of *mandamus* asked, saying:

> "The General Assembly should be given the opportunity to consider questions that here arise in regard to these lands. They doubtless will settle upon such action as will protect the State."

In the instant cause the Levee Board possessed the same power over the lands in controversy, and the right to compromise a suit respecting the same, as was possessed by the State of Louisiana in respect to the lands involved in the Hackley, Hume & Joyce suit, and if it was proper for the General Assembly to compromise the cause reported in the 119th Louisiana, notwithstanding fraud in the acquisition of the lands was claimed, it was clearly within the power of the Levee Board to compromise the issues involved in the suit at bar.

In ANTOINE VS. SMITH, 40 La. An., 560, suit was brought for the recovery from the defendant of two hundred shares of the capital stock of the Louisiana State Lottery Company. Plaintiff had become possessed of these shares, but being "engaged in politics," the circumstance that he held the shares was concealed by causing them to be placed in the name of another. The cause of the contract and the motive of the transfer were intrinsically illegal and opposed

to good morals and public policy, and with reference thereto the Supreme Court of Louisiana went so far in its opinion as to declare:

> "That such contracts cannot be enforced has been held in very many opinions of this Court and its predecessors, is evidenced by the following cases (Citing authorities).
>
> "But, however much we may reprobate such scandalous transactions; however much we may feel constrained, for decency's sake, to summarily eject the plaintiff from the portals of the temple of justice, it is our deliberate opinion that it cannot be done in the present attitude of this affair."

Notwithstanding the intrinsic illegality of the contract, the Court, under Article 3071 of the Civil Code, upheld the transaction or compromise between the parties relative to the subject-matter of the litigation, holding that the only essential as a matter of form, which that article requires, is that the contract of compromise must be reduced to writing.

An analogous rule is laid down in CALHOUN vs. LANE, 39 La. An., 594, 599, where the Court upholds a compromise between two forced heirs to the succession of their mother, which had the effect of binding a married woman's property for the debt of her husband. The Court said:

> "It cannot be contested that a married woman has the right to compromise a lawsuit against herself, or to make a transaction for the purpose of preventing a lawsuit against herself; and transactions have between the parties a force equal to the authority of things adjudged."

OGLESBY vs. ATTRILL, 105 U. S., 605, was a writ of error to the Circuit Court of the United States for the District of Louisiana. It was sought by defendants to enforce a reconventional demand or counterclaim against plaintiffs, because of the fraud of plaintiff and his associates in causing assessments to be levied on corporate shares owned by defendants, whereby such shares were lost. It appeared, however, that the parties had entered into a compromise in substantial accordance with Article 3071 of the Civil Code of Louisiana. It is said by Mr. Justice Field, in the opinion of the Court (pp. 610-611):

"The suits between the defendants and the Crescent City company involved the validity of the assessment which they, on account 'of frauds and machinations of the officers,' sought to enjoin, whilst the company sought to enforce its payment. The compromise concluded embraced the dismissal of the several suits—of those brought against the defendants and the one brought by them against the company—the transfer of their stock, and their release from present and future assessments thereon. There is no averment that it was induced by any false representations of the plaintiff or of the directors, or that the assessment was not a genuine one, or that the agreement of the directors that no assessment should be levied on their stock was carried into effect; or that there was any concealment of the affairs of the company; and of the value of the stock the defendants were as competent to judge as any others in the market. * * * The compromise stands, therefore, as a judgment, making a settlement of the very matters now set up as grounds of complaint in the petition in reconvention; that is, 'the frauds and machinations of the officers of the company' in levying the assessment. It settled all claims arising from the assessment, and the alleged fraudulent purposes of the officers in connection with it. Though made directly between the company and the defendants, it protects from further suit those who advised, equally with those who levied, the assessment; participants in whatever wrong was committed, if any there were, as well as principals; abettors as well as doers of it. *No allegations of fraud in addition to those made at the settlement, can prevent the compromise from having effect as a judgment thereon.* It may, indeed, by a direct proceeding instituted for that purpose, be rescinded for fraud, but it cannot, any more than any other judgment, be attacked collaterally. (ADLE VS. PRUDHOMME, 16 La. An., 343). In the face of the compromise, the reconventional demand cannot be sustained."

From the foregoing authorities it results that it is not against the public policy of the State of Louisiana to compromise a suit in which the issue of fraud *vel non* is involved. As we have already seen, the Levee Board, as respects the

lands in controversy, was possessed of the power to alienate without limit. An unlimited power to sell necessarily involves the power to compromise a suit with respect to the lands. The greater includes the less.

The Attorney General insists (petition, R. 15) that the compromise is to be treated as a sale of the lands, and that it is irregular because the lands were not duly sold to the highest bidder for cash under Act No. 215 of the General Assembly of Louisiana of 1908. There is no merit in this contention. The lands, when sold in November, 1898, were exposed at public sale to the highest bidder. In July, 1913, when the act of compromise was made, the Levee Board did not assume to sell the lands but merely to compromise a litigation which involved the mere possible right to recover the same.

An argument like that now made by the Attorney General was addressed to the Court in CALHOUN vs. LANE, 39 La. An., 594, 599. The Court said:

> "Assuming the agreement to be a sale and not a compromise, defendant's counsel further argues that it is void, for the reason that a married woman is not permitted to purchase property on terms of credit on her separate account, unless she is possessed of adequate means to discharge her obligations from her own resources.
>
> "While that is true as a general proposition, the principle is not properly invoked here. We have already ascertained that the agreement is not a sale; but it is one by which a *previously* existing title of defendant is recognized and affirmed."

Neither is there merit in the suggestion that a different rule should apply because the Levee Board is a public body, a municipal corporation. No such distinction exists upon either reason or authority. From time immemorial the Government, as well as municipal corporations, have been wont to compromise embezzlements and other frauds of public officers. When such compromise is confined to the civil liability, the power or propriety of the act has not been questioned in courts of justice.

In UNITED STATES vs. KNABE (C. C.), 147 Fed., 802, a compromise was made with the sureties on the bonds of

certain defaulting officers of the United States. The Court said (p. 806):

> "The law favors compromises and settlement of disputed property and pecuniary rights, as well where the Government is a party as where the litigation is solely between private individuals. When propositions of compromise of such disputes are made to the Government and accepted by it, the Courts will apply the same rules for ascertaining their meaning as govern in construing like contracts between man and man."

As we have seen, the correctness of this rule as applied to lands claimed to have been acquired from a State or municipal body by fraud is distinctly recognized in the case in 119th Louisiana above cited.

Not only may a municipal corporation compromise fraud by its intentional agreement, but the law goes so far as to hold that such a body may, by its acts, involuntarily waive a fraud and thereby prevent itself from recovering therefor.

The case of BAIRD vs. MAYOR, ETC., OF THE CITY OF NEW YORK, 96 N. Y., 567, illustrates the above. It was an action arising after the exposure of the Tweed ring. Suit was brought against the City to recover the purchase price of ten thousand water meters delivered it at the price of $70 each. The defence was that William Tweed, as Commissioner of Public Works, had fraudulently made the purchase for the City. The court held (p. 598) that even if fraud were shown, nevertheless the City, by accepting and retaining the meters, had waived its rights to object thereto.

If a municipal corporation may be held to have waived fraud, *a fortiori*, it must have the right deliberately to compromise it.

X.

THE LAND COMPANY PAID $100,000 AS A CONSIDERATION FOR THE COMPROMISE, AND IN NO EVENT COULD THAT COMPROMISE BE RESCINDED, BECAUSE THE MONEYS SO PAID HAVE NOT BEEN RESTORED.

There is no suggestion by the Attorney General that the State or the Levee Board, or anybody else, intends to refund

or will refund the money paid by the Land Company as the consideration of the act of compromise. On the contrary, the moneys have been covered into the State Treasury and passed to the credit of the Tensas-Basin Levee District and applied to the uses of the Levee Board. Not only does the Levee Board express no intent to refund the $100,000 received by it, but it declares its wish to retain the money and to stand upon the compromise into which it entered.

To carry on the suit (if that be allowed) is to rescind the compromise without restoring the consideration. This it would be against conscience for the Levee Board to do, and hence it would not be permitted. If the Levee Board would not be permitted thus to repudiate or rescind the compromise, another will not be allowed to do so in its behalf.

It is a familiar rule that a person who enters into a contract and afterwards seeks to avoid the effect of the contract on any ground that entitles him to rescind it, must first restore what he has received and place the other party in *statu quo*.

Grymes vs. Sanders, 93 U. S., 55, 62;
McLean vs. Clapp, 141 Id., 429;
Ward vs. Sherman, 192 Id., 168, 177;
Cook vs. Fidelity & Deposit Co. (C. C. A.), 167 Fed., 95, 101;
Hill vs. Northern Pacific Railway Co. (C. C. A.), 113 Id., 914, 917-918;
Ackerman vs. McShane, 43 La. An., 507;
Althoff vs. Transit Co., 204 Mo., 166.

It must be borne in mind that this sum of $100,000 was received by the Levee Board pursuant to the last contract entered into between the parties to the suit—viz., the act of compromise. Upon elemental principles complainant cannot procure a decree in its favor until or unless that act of compromise be first set aside. To allow the act of compromise to be set aside and the litigation to proceed, and at the same time permit the Levee Board to retain the $100,000 which it secured only on the express condition that it release all claim to the lands in suit, would be to sanction the perpetration of a fraud.

It is, therefore, perceived that before the complainant, or anyone in its behalf, may prevail in the suit and recover the lands, the right of the complainant to rescind *two* con-

tracts must be shown; *first*, the original contract of sale of November 9, 1898; *second*, the act of compromise of July 11, 1913.

The act of compromise or settlement is a *new* contract, and no right to rescind it is shown. The language of the Court in McLean vs. Clapp, 141 U. S., 429, 432, is applicable:

> "*The settlement was a new contract* between him and Clapp *and the law is clear that he cannot take the benefits of that contract and repudiate its burdens.* * * * Now, if he desired to rescind his contract, his duty was at once to return what he had received and repudiate wholly and forever the transaction. So far from doing this he did exactly the contrary; he retained all the notes and securities received under the settlement and has never yet returned one of them.
>
> "Were this all that appeared in the case, there would be nothing rising to the dignity of a question."

In Ackerman vs. McShane, 43 La. Ann., 507, in order to settle the affairs of a partnership, the plaintiff and defendant entered into a compromise in which plaintiff received $20,000 in cash, in full satisfaction and settlement of the interest of the testator in the partnership. A short time after the compromise was consummated plaintiff brought suit for an additional amount of $9,000, charging that the defendant, a surviving partner, had made untrue statements and had committed frauds in settlement. The plaintiff did not allege that she made a tender of the amount received by her as one of the parties to the compromise, but instead she proposed to supplement the amount received to a sum equal to the alleged value of the property. In the opinion of the Court it is said:

> "The defrauded party, if defrauded, cannot be restored to his original rights in the manner proposed. Good pleading and regularity, which should characterize legal proceedings, require that in suits of this nature the party shall resort to an action in rescission, and that the amount received shall be tendered or deposited. In all such actions the parties seeking relief must first offer to restore his adversary to the situation he was in before the contract.

> "As long as the plaintiff retains the consideration and does not offer to return the amount received, he is estopped."

In HILL vs. NORTHERN PACIFIC RAILWAY CO. (C. C. A.), 113 Fed., 914, 918, a release was executed to a railway company for a claim for personal injuries. Afterwards suit was brought to recover for the injuries, and it was sought to avoid the settlement as obtained by false and fraudulent representations. The Court quoted with approval the following statement of the law:

> " 'But there is another insurmountable obstacle in the complainant's way upon this feature of the case, that is, although she desires to set aside the contract of release, she still retains the consideration and has never offered to return it. Where a party attempts to rescind a contract, the rescission must be complete. He cannot affirm it in part and reject it in part. Common honesty would require him seeking to escape the burdens of the contract to return the benefits which he has received. This is not only a rule of common honesty and fairness, but has been recognized by the Courts from time immemorial.' "

So, also, in COOK vs. FIDELITY & DEPOSIT CO., 167 Fed., 101 (C. C. A.), an attack was made upon a settlement for fraud. It is said by the Court:

> "And even if it should be conceded that in this action at law the plaintiff in error was entitled to show, if he could, that the agreements entered into subsequent to August 15, 1905, were executed by reason of fraud or misrepresentations, still upon the most obvious principles of right he could not avoid them while retaining the money and other property received by him by virtue of their execution."

When this cause was before the Court on demurrer (BOARD OF LEVEE COMMISSIONERS vs. TENSAS-DELTA LAND COMPANY, 204 Fed., 736, 741), it was held that, inasmuch as the bill of complaint alleged that moneys in excess of the original purchase price had been received by the Land Company from the sales of lands, it was not necessary for complainant

in its bill to tender to defendant Land Company the $130,000 originally paid for the lands, because the Court could probably adjust the equities between the parties. Clearly the principle there enunciated has no application here. The sum of $100,000 to which we now advert was not received by the Levee Board under the contract of sale made in November, 1898, but was paid to secure the compromise of disputed claims.

There was a *bona fide* dispute between the parties respecting the claims made by the Levee Board in its bill. The Land Company insisted that those claims were wholly false. These disputed claims of the respective parties were made the subject of compromise. It is well settled, as said in FIRE INSURANCE ASSOCIATION VS. WICKHAM, 141 U. S., 564, 577, that:

> "If there be a *bona fide* dispute as to the amount due, such dispute may be the subject of a compromise and payment of a certain sum in satisfaction of the entire claim."

This compromise of a disputed claim constitutes, as we have seen, "*a new contract*" between the parties. Because of that new contract the Land Company parted with $100,000 in cash. These moneys have never been restored, nor is any offer made to restore the same, and hence "the law is clear," as said by the Supreme Court of the United States in MCLEAN VS. CLAPP, *supra*, that complainant "cannot take the benefits of that contract and repudiate its burdens."

The State of Louisiana created this Levee Board for the express purpose of receiving, administering and disposing of the swamp lands and tax-title lands within the district and applying the proceeds for the benefit of the inhabitants of the district, in manner as provided in the act. The disposition of the lands and likewise the disposition of suits or proceedings respecting the same, are confided by legislative enactment to the discretion of that body. It is a body composed of representative citizens residing in the eight parishes composing the district. They are men of character and standing in their respective communities. Presumably they are familiar with the value of the lands and know the interests of their constituents, and are competent to act in furtherance thereof.

After much deliberation, and in the exercise of their best judgment, the members of this Levee Board have seen fit to compromise a pending litigation respecting these lands, the success or failure of which depends not upon a mere question of law, but upon their ability or inability to establish facts claimed in their bill. The Honorable Attorney General, while not questioning their good faith, denies their legal right to decide matters expressly confided by legislative act to their discretion. He insists, apparently, that under some rule of law, hitherto unheard of, they have no power to do aught but prosecute the litigation to a conclusion, even though it be manifestly to the advantage of the inhabitants of the Levee District to compromise the same.

If these pretensions of the law officer of the State are well founded, the same may be exercised in the case of every municipal corporation or board in the State of Louisiana, and no longer will there be local self-government in that State, and the powers of all those local bodies may no longer be employed according to the best judgment of the members composing the same, but only as the paramount and superintending authority of the Attorney General may determine. There is no warrant in the laws of Louisiana for such claims.

XI.

Conclusion.

(*a*) We again call attention to the fact that the Attorney General does not in any manner attack the compromise made by the Levee Board on July 11th, 1913, except to assert that it was a compromise of a fraud. He does not impugn the good faith, or business judgment, or the conduct of the members of the Levee Board. He was not the Attorney General who brought either the original suit by the State, or the suit by the Levee Board. This was done by his predecessor in office, Hon. Walter Guion. Having inherited it, he evidently regards it as an heirloom.

(*b*) The claim of the Attorney General that Act No. 3 of the extra session of 1910, quoted in full above, took away from the Levee Board—and consequently every political agency or subdivision in the State—all control over cases

involving title to land is without any foundation. The act does not make any such provision. It would be a very broad stretching of that statute to say that it repealed those parts of the special charter of every municipal corporation and Levee Board in the State which give them power to sue and be sued, to hold and dispose of lands, and to exercise their corporate discretion and judgment in all matters within their corporate powers.

The act simply makes the Attorney General, whenever so instructed by the Governor, appear as the counsel for the State and its sub-divisions. It does not make him, as counsel for the State or one of its sub-divisions in a land case, the master of either the State or of its sub-divisions, with power to veto any action the State or its sub-divisions may take looking to an adjustment, settlement or compromise of the litigation.

(c) In the petition for *certiorari* filed by the Attorney General in this Court, as well as in the petition for *mandamus* and *certiorari* filed in the Circuit Court of Appeals, charges of gross fraud are made, and likewise many extravagant statements respecting the value of the lands in controversy. In the petition for *certiorari*, for example, (par. VI), it is charged that the Tensas-Delta Land Company, Limited, was willing to pay $200,000 for the lands in 1898, yet acquired the same for $130,000; and it is further asserted as a fact that the sum of $20,000 in cash and $18,750 of the capital stock of the Land Company were illegally used by it in consummating the sale.

Again it is asserted in the petition for intervention and appeal, that the lands at the time of the filing of the bill were worth at least $4,300,000 (R. 6), while in the brief (p. 46), filed by the Attorney General in this Court, it is said that they are worth perhaps $7,500,000. In the bill of complaint it is averred, however, that the lands, when conveyed by the Levee Board to the Land Company, were worth at least $500,000 (R. 118), and at the time of the filing of the bill were worth $1,728,439.80 (R. 123).

These statements are unfounded and recklessly made, as well as inconsistent with each other. There is no showing made of any fraud in the purchase of these lands in November, 1898, unless mere unsupported assertion can be said to constitute such showing. Nor are the lands themselves worth more than a fraction of the fabulous sums which

counsel allege them to be worth. In his return the District Judge says (R. 36):

> "The answer filed by the defendant in support of its demurrer and verified by the Hon. F. G. Hudson, legal agent of the defendant, tends to show that the valuations placed on said lands in the bill of complaint are greatly exaggerated. The answer so verified by Mr. Hudson not only denies all fraud in the sale, but states that the lands were worth at the time only $130,000. No evidence was produced before me upon the return of the order to show cause, or at any other time, tending to show that the present value of said lands is so great as stated in the petition for leave to intervene and appeal subsequently filed, or in the petition for *mandamus* and *certiorari* filed in this court. I refer to the answer in support of the demurrer filed by the defendant and verified by Mr. Hudson, not with any thought that it is possible to try upon this motion the truth or falsity of the charges made in the bill of complaint, but because throughout the petition for *mandamus* and *certiorari* filed in this court it is assumed that there was fraud in the sale and that the Levee Board has failed in its duty to prosecute a suit to recover the lands, and that the intervention of the State is permissible for that reason. But no evidence supporting or tending to support these claims or assumptions was at any time introduced before me; nor are the same just inferences from the facts which were shown before me. It does not appear, from anything shown in the court below, that the compromise was in any respect against the best interests of the Levee District, nor that the Levee Board was wrong in its conclusion that the act of compromise, carrying with it the payment of $100,000, was fitly to be preferred to the hope of gaining, balanced by the fear of losing in said litigation."

The District Judge, in his return (R. 37), also adverts to the fact that on a former occasion, viz., on July 9, 1903—an act of compromise with reference to the lands mentioned in the bill of complaint was entered into by the Levee Board, with the Tensas-Delta Land Company, Limited, and that such former act of compromise was, by the act of compromise

of date July 11, 1913, ratified and confirmed. The District Judge further says (R. 37):

> "Under all the facts appearing in the record it might well be deemed by the members of said Levee Board to be a prudent act in the interest of their constituents, to enter into the compromise aforesaid, and thereby acquire for the Levee District the benefits thereof, and *it has at no time been claimed before me by the Honorable Attorney General, or by anybody else, that said members of the Levee Board acted otherwise than in the utmost good faith in the compromise so made by them.*"

In the return of the District Judge it is shown that no State official, or other person claiming to act in behalf of the State, save the Attorney General, objected to the dismissal of the Suit; that it was the view of the District Judge that the Board of Levee Commissioners, acting in good faith and for what it deemed the best interests of the tax payers and inhabitants of the Levee District, was entitled to compromise the litigation and had full power and authority so to do; and hence the District Judge made the order of October 21, 1913, dismissing the suit, and subsequently denied the application of the Attorney General made on April 6, 1914, for leave to intervene and appeal.

It is respectfully submitted that there was no error in the orders so made by the District Judge, nor in the refusal of the Circuit Court of Appeals to issue a peremptory order of *mandamus* to overturn the same.

HENRY BERNSTEIN,
WILLARD F. KEENEY,
Counsel for Respondent.

Powers-Tyson

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No. 6[redacted]264

No. ——.

Supreme Court of the United States

OCTOBER TERM, 1915.

STATE OF LOUISIANA,

Petitioner,

versus

TENSAS DELTA LAND COMPANY, LIMITED, *ET ALS.*,

Respondents.

R. G. PLEASANT,
Attorney-General of Louisiana,
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No. ——.

Supreme Court of the United States

OCTOBER TERM, 1915.

STATE OF LOUISIANA,

Petitioner,

versus

TENSAS DELTA LAND COMPANY, LIMITED, *ET ALS.*,

Respondents.

To the Honorable the Supreme Court of the United States:

The petition of the State of Louisiana, appearing herein by and through its Attorney General, Ruffin G. Pleasant, respectfully represents:

I.

That this is an application praying that a writ of *certiorari* may be issued by this Honorable Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding it to send up to this Court for review the record and all of the proceedings had in said court in a certain cause pending before it, entitled, in said court, "*United States of America ex rel. State of Louisiana, Petitioner, vs. Hon. Aleck Boarman, Judge United States District Court for the Western District of Louisiana,*" No. 2636 of its docket, which was

an application made to said court for writs of *certiorari* and mandamus, to be directed to the respondent Judge of said District Court. Said application prayed that, after a review by said Court of Appeals of the record and proceedings and final judgment rendered by said District Court in a certain suit therein pending, entitled "*Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited,*" No. 694 of its docket, and which granted the motion of the defendant, Tensas Delta Land Company, Limited, to dismiss said suit because of an asserted compromise, and refused to permit petitioner to appeal from said judgment to said Court of Appeals, petitioner be held to be entitled to appeal from said judgment, and said Court of Appeals order said District Court to grant an appeal to petitioner in a case in which petitioner's interest in said land is alleged to exceed one million dollars.

II.

The complainant Levee Board alleged, in the said Suit No. 694 of the docket of the District Court, that certain of its members and other persons had made a fraudulent sale of 885,043 acres of land for $130,000, and set out minutely and in detail the character of the fraud, the parties who were bribed in making the same to its great injury, and prayed for judgment setting aside the sale; nevertheless, the Tensas Delta Land Company, defendant, which is charged with participating in said fraud, after paying over $100,000 to said Levee Board, in compromise of said litigation, moved to dismiss the plaintiff's bill, on the ground that the matters therein—which was a fraudulent sale of land—had been compromised. A return or protest was made by the Attorney General (see return, page 44, answer of Respondent

Judge, or Exhibit "B," page 35 of Petition for *Certiorari* to Court of Appeals), on the ground that fraud could not be made the subject of compromise; but, notwithstanding said return, the said United States District Court overruled the same, ratified the said compromise, and dismissed the suit of the Levee Board. (See page 87, answer of Respondent Judge.) Thereupon the State of Louisiana asked leave to intervene in order to prosecute an appeal from the said final judgment, and attempted to file a motion for appeal and assignment of errors, which motion and assignment of errors the said District Court declined to permit petitioner to file, holding that the State of Louisiana had no interest in the subject-matter, and no right to appeal from said judgment of dismissal aforesaid. The motion and assignment or errors do not appear of record in the return of the Judge nor elsewhere, for the reason that the trial Judge refused to permit their filing, but the evidence, showing the Court's refusal to permit same to be filed, will be found in paragraphs IX and X of the return of the respondent Judge. The said petition and assignment of errors will be found annexed to petitioner's application to the Court of Appeals for *certiorari* and mandamus, on pages 7 and 13, respectively, being Exhibits A and B of said petition.

It was then that petitioner, feeling aggrieved, and believing the judgment erroneous, applied for writs of *certiorari* and mandamus to the Court of Appeals. Whereupon the Court entered the following final judgment in said cause:

> "The application for mandamus and *certiorari* to the Judge of the Western District of Louisiana to allow an appeal on the part, and in behalf, of the

State of Louisiana from a case, entitled *'Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited,'* is denied.

"1. Under the decision of the Supreme Court of the State of Louisiana, reported in *State vs. Tensas Delta Land Co., Ltd.*, 126 La. 59, the Supreme Court of the State, on full consideration, decided that the State was without real or beneficial interest in the lands in controversy, and this decision is controlling in this court.

"2. One who is not a party to a record and judgment is not entitled to an appeal therefrom. (*Bayard vs. Lombard*, 9 How. 530; *Indiana vs. Liverpool & London & Globe Ins. Co.*, 109 U. S. 168; *Ex Parte Cockroft*, 104 U. S. 578; *Ex Parte in the Matter of Leaf Tobacco Board of Trade of the City of New York, Petitioner*, 222 U. S. 578, 581.)

"Rule discharged."

Original filed October 29, 1914.

The litigation to unearth this fraud has been before the courts, both State and Federal, for several years, first in an action brought by the State; and, second, in an action brought by the Levee Board, in an effort to have a hearing on the merits. In each instance, instead of answering to the merits, the Tensas Delta Land Company, Limited, has seen fit to file demurrers in an effort to steer clear of the merits. We think we can justly term this litigation, because of the moral turpitude involved, the vast amount of land in contestation, and the vigor with which the case has been prosecuted and defended, a *"cause celebre."*

III.

In order to understand the issues involved in this application, it will be necessary to recite in detail the facts and circumstances leading up to the appearance of the State and the filing of the suit by the Board of Levee Commissioners of the Tensas Basin Levee District against the Tensas Delta Land Company, which was removed into the United States District Court for the Western District of Louisiana on the petition of the defendant Land Company from the Sixth Judicial District Court, Parish of Ouachita, Louisiana, because of the diversity of citizenship of the parties plaintiff and defendant.

Subsequent to the admission of your petitioner into the Union, it acquired a vast quantity of land by Congressional Grant, commonly known as the "Swamp Land Grant" (Acts of 1849 and 1850). Petitioner also acquired many thousands of acres of land by reason of forfeiture because of the nonpayment of taxes under existing laws, all of which is described in the suit of the Levee Board against the Land Company.

Under Article 214 of the Constitution of 1879, it was provided that the General Assembly may divide the State into levee districts and provide for the appointment or election of levee commissioners, in order to supervise the erection and maintenance of levees, to do which it was authorized to levy a tax not to exceed five mills on the taxable property situated within the alluvial portions of said district subject to overflow, and, accordingly, the Legislature created the "Tensas Basin Levee District," composed of the Parishes of West Carroll, Franklin, Catahoula, Caldwell, Ouachita, Richland and Morehouse, in the State of Louisiana, by Act 59 of the Acts of the General Assembly of Louisiana of

1886, as amended by Act 77 of 1888, Act 103 of 1892, Act 70 of 1894, Act 117 of 1898, Act 20 of 1900, and Act 311 of 1908. Under the law creating said district the Governor appointed one qualified voter from each of the parishes of the State to constitute a Board of Levee Commissioners, styled by the act "Board of Levee Commissioners of the Tensas Basin Levee District." It was constituted and appointed a body politic, with corporate powers and with the right to sue and be sued, in the carrying on of the work for which it was created.

By Act 77 of 1888, amending Act 59 of 1886, creating said levee district, it was provided in Section 2 thereof:

> "That, in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable the said board to assist in developing, establishing and completing, either within or without the State, a system of levee and other works of public improvement, all lands now belonging, or that may hereafter belong, to the State of Louisiana, and embraced within the limits of the Tensas Basin Levee District as herein constituted, shall be, and the same hereby are given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas Basin Levee District, whether said lands or [are] parts of the lands originally granted by the Congress of the United States to this State, or whether said lands have been, or may hereafter be forfeited to, or bought in by or for, or sold to the State at tax sales for nonpayment of taxes."

Section 2 of said act made it the duty of the Register of the State Land Office and the Auditor of the State, or either of them, upon the request of said Board, or its presi-

dent, to convey to said Board, by proper instruments of conveyance, the lands thereby granted, and the president was directed by the act to "cause said conveyance to be properly recorded," and that, "when said conveyances are so recorded, the title to said lands, with the possession thereof, shall from thenceforth vest absolutely in said Board," etc.

IV.

Subsequent to the adoption of said Act 77 of 1888, which gave said Board, or its president, authority to request a deeding over of the lands of your petitioner, the said Board did from time to time apply for, and in due course obtained from the Register of the Land Office and Auditor, deeds to it of many thousand of acres of said land lying within the parishes comprising said levee district, consisting of lands forfeited to petitioner for nonpayment of taxes, and lands obtained by your petitioner from the United States by Congressional grant, all of which are shown in the suit of *Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Ltd.*, hereinafter referred to. The lands in question were and are the lands of your petitioner, the State of Louisiana, and not of the Levee Board, which the State had turned over to said Board merely as an agent; and, moreover, it was the intention of the law that, should the Board part with said lands, it would do so for a fair and honest price and in an honest and legitimate manner, in keeping with the trust imposed upon it.

V.

In 1894, after petitioner had transferred all of its swamp land and land forfeited to it for taxes within said

district to the said Levee Board, Joseph W. Simms, of Richland Parish, Louisiana, was appointed by said Levee Board as its land agent, to negotiate a sale of said lands, and was authorized to find a purchaser for said lands at a minimum price of fifty cents (50c) an acre. In 1896, said Simms entered into an agreement with James W. Brown, of Brownsville, Tenn., by which said Brown was to assist him in finding a purchaser for said land and share with him in the commission to be paid by the Levee District.

In September, 1898, a fraudulent and collusive scheme was entered into by and between the said James W. Brown, the said Joseph W. Simms, Land Agent aforesaid; Jas. J. Lacey, S. Wood Beal, Thomas Hume, Ransome C. Luce, T. Stewart White, Thomas Friant, Jno. C. Rugee, Jos. J. Tucker and Anton G. Hodenpyl, with certain of the then members of the said Levee Board and certain officers, agents and employees thereof, whereby all of the aforesaid lands were to be sold and delivered for a nominal consideration and at a price far less than their actual value to a company or corporation to be thereafter organized, to be composed of the persons just above mentioned, except James W. Brown and Joseph W. Simms; and, in furtherance of said collusive and fraudulent scheme, and to effectuate the same, a limited liability partnership was formed under the laws of Michigan, domiciled in Grand Rapids; James D. Lacey and S. Wood Beal were placed in active charge of the affairs of said concern, which was styled, in the articles of association, "The Tensas Delta Land Company, Limited," respondent herein.

VI.

The Tensas Delta Land Company, Limited, was willing to pay two hundred thousand dollars ($200,000) for said

land, although worth at the time much more, but the said Land Company actually purchased the same for one hundred and thirty thousand dollars ($130,000) through gross fraud on the part of said Land Company and certain members of the Levee Board and agents, as fully set out in the suit of said Levee Board, which fraudulent scheme consisted principally in the fact that the sum of twenty thousand dollars ($20,000) in cash, and eighteen thousand seven hundred and vfty dollars ($18,750) of the capital stock of the said Land Company were illegally used by it in the consummation of said sale by being given by it to certain of the members, officers and agents of said Levee Board to influence, and which did actually influence, a sufficient number of the said members of said Board of Commissioners, who received the same, to vote in favor of the acceptance of said sum of $130,000 for said land, which said sale was thereafter made on November 9, 1898, in the carrying out and final consummation of said fraud and fraudulent scheme. The details are given in the suit brought by the Levee Board against the Land Company, as also the amounts of money paid to individuals to consummate same. (See Petition, Record, Court of Appeals, in suit of Levee Board vs. said Land Co., annexed hereto, marked Exhibit "Record 1.")

VII.

Petitioner only acquired knowledge of said fraud at about the close of the year 1908, the fraud having been concealed, and within a reasonable time thereafter filed suit in the Seventh Judicial District Court, Parish of Richland, La., against said Land Company to recover the lands, the report of which suit will be found in 126 Louisiana, 59, and is entitled "*State of Louisiana vs. Tensas Delta Land Co.*,

Ltd. The petition in said suit sets forth that certain of the Levee Board members and agents and members of said Land Company had entered into a fraudulent conspiracy with regard to the sale of said lands, and had actually consummated the same through said means, and detailed minutely the fraud and prayed that the sales made be set aside and declared a nullity, and that the State be decreed owner thereof, except as to lands sold to third persons.

The lower Court sustained the exception of the Land Company, holding that the State of Louisiana had no interest in the subject-matter of the suit, and that the Levee Board alone would bring the suit, and dismissed petitioner's suit. This decision was affirmed by the Supreme Court of Louisiana in the above report, the Supreme Court, however, further holding as follows:

> "Again, it is true that if the governing body of one of these corporations fails in its duty to bring a suit which clearly it ought to bring, the Courts may [only, however, under highly exceptional circumstances] allow any citizen or taxpayer of the district to bring the suit; and, in such a case, **the same privilege might for the same reason be extended to the State;** but nothing of that kind is pretended in this case. There is no suggestion that the Board of Commissioners of the District has failed to bring suit, or is unwilling to do so. In fact, this Court knows the contrary from the public prints.
>
> "Moreover, the prayer of a suit of that kind would have to be that the property be returned to the Levee Board to be disposed of as directed by the Legislature; whereas, the prayer of the present suit is, distinctly, that the property be decreed to belong to the State, and be delivered to the State. * * * The effect of granting this prayer would be to take

away these lands from their legitimate custodian and owner, **the corporation to which the Legislature has given them, and under whose control the Legislature has provided they shall be,** thereby frustrating and nullifying an admittedly valid statute. In fact, repealing the statute."

VIII.

Thereafter the General Assembly of Louisiana passed Act No. 3, at its extra session of 1910, making it the duty of the Attorney General to represent the State or any political agency or subdivision in any suit involving title to land or real property belonging to the State or any political agency when requested by the Governor, and, request having been made by the Governor to file suit for the recovery of the said lands, the Attorney General, on October 7, 1911, filed another suit against the said Tensas Delta Land Company, Limited, in accordance with the ruling of the Supreme Court of Louisiana, this time in the name of the said Levee Board. This suit was entitled "*Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited,*" No. 7612 of the docket of the Sixth Judicial District Court for the Parish of Ouachita, in which all of the averments of fraud made and set forth in the petition filed by the State were made in said suit and prayer made for the setting aside of the sale. In due course, because of a diversity of citizenship, said suit was removed by the defendant land company to the District (then Circuit) Court of the United States for the Western District of Louisiana. Demurrers were promptly filed by defendant.

A certified copy of said record is annexed for reference, same being necessary in order that the issues may be proper-

ly presented, the said record being marked, for identification, "Exhibit Record I."

At the argument on the demurrers complainant Levee Board asked leave to amend the complaint as recast, and the Court asked the Attorney General, as counsel for the Levee Board, to prepare and submit the amendment he proposed to file, which was done, and upon being submitted, the Court held that:

> "To allow the proffered amendment would not better the case."

The demurrer was sustained.

The Board of Levee Commissioners appealed said cause to the United States Circuit Court of Appeals, Fifth Circuit, which reversed said judgment and remanded the cause,

> "with directions to allow the amendment offered, to overrule the demurrers, and to allow the defendants twenty days in which to answer, and to proceed with the case according to law and the rules in equity."
>
> See 204 Fed. 741, or pages 8-24 of Answer of Respondent Judge.

In due course, the mandate of the United States Circuit Court of Appeals was filed in the lower court, and an order entered in said lower court overruling the demurrer, ordering that the said proffered amendment be filed as a part of said Levee Board's bill of complaint, and that defendant file its answer.

IX.

After obtaining this order, the Attorney General of the State was actively engaged in getting evidence and prepar-

ing for the trial of the said case on its merits, when, on July 22, 1913, the Tensas Delta Land Company, Limited, defendant in said suit, filed a motion to dismiss, setting forth that by resolution of said Levee Board duly adopted on the 11th day of July, 1913, and confirmed by notarial act, the parties to said cause had "compromised the same and all the issues involved," and that the defendant, the Tensas Delta Land Company, Limited, "in execution of said compromise, has paid to the complainant (Levee Board) the sum of one hun dred thousand dollars ($100,000)." It was ordered by the Court that the plaintiff (Levee Board) "and R. G. Pleasant, Attorney General, its counsel of record herein, do show cause on the first day of the next term of this Court * * * why this cause should not be dismissed at complainant's cost." (See page 33, Return of Judge.)

In answer to the rule to show cause, the Attorney General filed the following protest, insisting that the said agreement should not be recognized nor the said suit of the Levee Board dismissed. (See Return of Judge, page 44.)

> "FIRST. That the said suit is based upon the fraudulent sale of nearly 900,000 acres of land belonging to the complainant and the said fraud vitiates the contract of sale.
>
> "SECOND. A fraudulent sale of public lands cannot be ratified and approved by a subsequent agreement between the vendor and the vendee. Only a new legal and honorable sale, for an adequate consideration, can operate a transfer of said property. The ratification of a fraud is no more legally binding than the perpetration of the original fraud itself, and no government, governmental agency or subdivision, or court, can justify the one nor condone the other. This results not only from the positive expressions

of the law, not only because it is *contra bonos mores* and against public policy, but also because it is inherently one of the fundamental objects of government to prevent and punish fraud, and especially fraud against the sovereign. Government and fraud are basically antagonistic. Either fraud must be condemned and government upheld or fraud upheld and government abandoned.

"The motion to dismiss this suit states that the differences between the parties thereto have been settled and compromised by the payment of $100,000 by defendant to complainant. The only point in dispute was the question of fraud, all others having been abandoned during the progress of the case, as shown in the judgment of this Honorable Circuit Court of Appeals and by admission of complianant's counsel in open court. The question compromised, therefore, was that of fraud, and nothing else, and the Court should not favor wrong instead of right by dismissing a suit of which it has full and complete jurisdiction.

"THIRD. Complainant should not be permitted to use the court and its processes for the purpose of condoning and compromising fraud for money.

"FOURTH. The Attorney general cannot dismiss this suit without express authority from the Governor of the State of Louisiana so to do, for the reason that his right to represent complainant herein and prosecute this suit was conferred upon him by the Governor under the provisions of Act No. 3 of the Extra Session of the General Assembly for the year 1910, and said right has never been withdrawn; that the Attorney General is not answerable to the complainant for his management of this suit; nor is he bound to dismiss same at the request of said complainant; that the effect of said act of the Legislature is to place the Governor in supreme charge of this and similar suits in the event he chooses to proceed

under the act in any particular suit; that the Attorney General is directly responsible to him, and to him alone; that it was the intention of the Legislature, in passing the statute above cited, to give to the Governor, and through him to the Attorney General, the control of suits of this character, and on account of this control prevent the compromise of the public's rights and interests, such as the Board of Commissioners of the Tensas Basin Levee District has attempted to do in the present instance; that the complainant cannot compromise this suit, nor the Court dismiss it, without the Governor's consent in any event.

"*Wherefore,* respondent prays that defendant's motion to dismiss be denied, that the agreement upon which it is based be disregarded, that defendant be ordered to file its answer to the complainant immediately, and that the trial of this case on the merits be proceeded with without delay.

"Further prays for all necessary orders and general and equitable relief.

"R. G. PLEASANT,

"*Attorney General, State of Louisiana, and Attorney of Record for Complainant.*"

X.

Notwithstanding the filing of said return and protest the said District Court, on October 21, 1913, recognized the same "as having the effect of the thing adjudged, and as settling all issues involved," and dismissed the said suit filed by the Levee Board, thus, in effect, permitting the compromise of a fraud for a money consideration, as the entire complaint of the Levee Board contained charges of fraud, which compromise is reprobated by law, and especially by courts of equity, is against public policy and should not have been

sanctioned by the Court, especially since the lands in question were the lands of your petitioner.

XI.

Thus, as petitioner has filed suit previously to recover said land, which was dismissed because of the Court's holding that petitioner could not proceed unless the Levee Board were unwilling to do so, and as the Levee Board had likewise filed suit to recover these lands, but was unwilling to prosecute the same to judgment, your petitioner, the State of Louisiana, as owner of the lands, felt that it was its bounden duty to intervene for the purpose of prosecuting an appeal from said judgment, just as the Supreme Court of the State of Louisiana in the 126th Annual case, above quoted, showed that it had a right to do. This the District Court declined to permit; hence, a resort was had to the said Court of Appeals for a writ of mandamus to compel said Court to permit petitioner so to do, and which petition was dismissed, as hereinbefore set out.

XII.

Petitioner alleges that it is provided by Article 58 of the Constitution of the State of Louisiana of 1898, and repeated by the Constitution of 1913, that:

> "The funds, credits, property or things of value of the State, or any political corporation thereof shall not be loaned, pledged, or granted to, or for, any person or persons, association or corporation, public or private."

That the same provision is contained in the Constitution of 1879, and that it must undoubtedly appear very evi-

dent to your Honors, in view of said provision, that the State of Louisiana has not irrevocably dispossessed itself, by the grants hereinbefore detailed, of all beneficial interest in these lands, but that the intention of the Legislature in making the grants aforesaid was merely to constitute the said Board an agent of the State for the better handling of the affairs of the sovereign, the Levee Board merely acting, as was held by the United States Circuit Court of Appeals on a branch of this case, reported in 204 Federal, 745, "in a fiduciary capacity," and "suing for the benefit of the public before the rights of third praties have attached," and under which state of affairs the Court held it "should be reluctant to deprive it of relief."

Petitioner alleges, therefore, that its interest in and to these lands is paramount, and that while it is true the suit was brought by the Levee Board, yet the fact that its interest therein was paramount entitled the State, as a quasi party, as held in *Williams vs. Morgan,* 111 U. S. 684, to appeal this case. Your Honors held, as late as *Little vs. Williams,* 231 U. S. 335, that a Levee District, similar to the one involved herein,

> "was a mere political subdivision of the State, created by the latter, and invested with authority to construct and maintain levees to protect lands within its limits from overflow by the waters of the Mississippi River, and to levy and collect taxes and take other measures to that end. (Laws Arkansas, 1893, pp. 24, 119.) It was essentially a subordinate agency of the State, was exercising a power of the State for its convenience, could have no will contrary to the will of the State, held its property and revenues for public purposes, and was in all respects subject to the State's paramount authority."

If the Levee Board is subject to the State's paramount control, so are the lands standing in its name, and the State's

right of appeal from said compromise should be recognized in this case, the position of the Levee Board being that of a *quasi* party, as recognized by this Court in *Williams vs. Morgan, supra,* where the Court used this language, in a case where Williams took an appeal from the judgment of court awarding compensation to the trustees under the mortgage, he being the holder of railroad bonds secured by mortgage:

> "We think that the position of Williams and Thompson made them *quasi* parties in the case, and brought them within the reason of the former cases decided by this court in which persons incidentally interested in some branch of a cause have been allowed to intervene for the purpose of protecting their interest, and even to come into this court, or to be brought here on appeal, when a final decision of their right or claim has been made by the Court below."

Petitioner also relies upon the provisions of the Code of Practice of Louisiana, Article 571, in support of its right to an appeal, which gives such a right "not only to those who were parties to the cause in which a judgment has been rendered against them, but also to third persons" aggrieved by the judgment, and which statute, being one that creates a new right or remedy, should have been enforced by said Court sitting in equity.

Petitioner avers that jurisdiction of said cause in the District Court was taken because of diversity of citizenship of the parties plaintiff and defendant; that the judgment of the Court of Appeals refusing the relief prayed for by petitioner is final and unappealable, and that the judgment can only be reviewed by *certiorari* from this Honorable Court to the said Court of Appeals, and that the case presented warrants the issuance thereof.

Petitioner alleges that it is aggrieved by the said judgment of the United States Circuit Court of Appeals for the

Fifth Circuit and the judgment of the United States District Court for the Western District of Louisiana, and believes the said judgments to be erroneous. Petitioner believes and alleges that this Court should require said case to be certified to it for review and for petitioner's relief.

Petitioner further alleges that its interest in this matter exceeds one million dollars.

Petitioner annexes hereto, in accordance with the rules of this Honorable Court, a certified copy of the record and all proceedings had in the United States Circuit Court of Appeals, Fifth Circuit, on the application for certiorari and mandamus, by petitioner, and annexes hereto copies of the record, duly filed in said Court of Appeals, of the cause entitled "*Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Comapny,*" which is necessary to bring up as an exhibit hereto, being marked "Exhibit Record 1," in order that this Court may be fully advised in the premises, and also annexes a brief in support of said petition.

Petitioner avers that it has notified the Board of Levee Commissioners of the Tensas Basin Levee District, the Tensas Delta Land Company, Limited, and the United States Circuit Court of Appeals, Fifth Circuit, at their proper addresses, and Messrs. Farrar, Jonas, Goldsborough & Goldberg, of New Orleans, La. and Henry Bernstein, of Monroe, La., counsel of record of said Tensas Delta Land Company, respondent in this application by registered letters, through the United States mail, the said letters having been dated and mailed to each of them on September 18th, 1915, addressed to each at his proper address, and bearing proper notice, that petitioner would apply to this Honorable Court on Monday, October 11, 1915, for a writ of *certiorari* to review the judgment herein complained of, as herein shown.

Petitioner alleges that, at the same time, it mailed to said counsel and Court and other parties above named, copies of this petition and of the brief filed in support hereof within the time prescribed by the rules of this Court.

Wherefore, petitioner prays leave of this Honorable Court to file this petition, brief and exhibits, and prays that this Honorable Court, after due consideration thereof, may issue a writ of *certiorari*, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to send up to this Honorable Court, on a day certain to be therein designated, a full and complete transcript of the record and of all proceedings of the said Circuit Court of Appeals in the said cause, entitled *"United States of America ex rel. State of Louisiana vs. Hon. Aleck Boarman, Judge United States District Court, Western District of Louisiana,"* No. 2636 of its docket, the same being a petition for writs of mandamus and *certiorari* as also certified copy of the record and proceedings on a branch of this case bearing the No. 2446 of the docket of said Court, being the suit of the Levee Board against said Land Company, to the end that the said case may be reviewed by this Honorable Court, as provided by Sections 240 and 262 of the Judicial Code, and the Act of Congress, approved January 28, 1915, amending said Code; that the judgment of the said United States Circuit Court of Appeals for the Fifth Circuit in the said case be reversed, and judgment entered holding that the State of Louisiana was entitled to prosecute an appeal from the said judgment of the District Court sustaining the compromise entered into by the Board of Commissioners of the Tensas Basin Levee District and the Tensas Delta Land Company; and, to the end that your petitioner may have the proper relief herein,

it prays that the United States Circuit Court of Appeals for the Fifth Circuit be directed to order the United States District Court for the Western District of Louisiana to allow petitioner an appeal from its said judgment upon filing the said assignment of errors and motion for appeal heretofore tendered to said District Court, or that the case be remitted to the said District Court, with directions to allow petitioner an appeal.

And petitioner prays for such further and other orders in the premises as the nature of the case may require and as may be meet and proper in equity, in conformity with the law and procedure of United States Courts.

RUFFIN G. PLEASANT,
Attorney General of the State of Louisiana,
Counsel for Petitioner, the State of Louisiana.

G. A. GONDRAN,
DANIEL WENDLING,
Of Counsel.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

I, Ruffin G. Pleasant, being duly sworn, say:

That I am Attorney General of Louisiana, and, as such, counsel for petitioner State of Louisiana; that I have read the foregoing petition and that the allegations thereof are true and correct, as I verily believe.

RUFFIN G. PLEASANT,

Sworn to and subscribed before me
this 18th day of September, 1915,
at New Orleans, Louisiana.

.....
Clerk Court of Appeals,
Parish of Orleans.

MOTION FOR CERTIORARI.

Supreme Court of the United States

STATE OF LOUISIANA,

Petitioner,

versus

TENSAS DELTA LAND COMPANY, LIMITED,

Respondent.

The State of Louisiana, petitioner, appears by Ruffin G. Pleasant, Attorney General, and Daniel Wendling, of counsel and moves the Court for the issue of a writ of *certiorari* or other process directed to the United States Circuit Court of Appeals for the Fifth Circuit requiring said Court to certify to this Court for its review and determination a certain cause lately pending in said Court of Appeals, wherein the State of Louisiana was petitioner, and the Hon. Aleck Boarman, Judge of the United States District Court for the Western District of Louisiana, was respondent; and, to that end, it tenders herewith its petition and brief, with a certified copy of the entire record in said cause in said Court of Appeals, as also a certified copy of the record on another branch of said case, entitled *"Board of Levee Commissioners*

of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited," which is necessary in order that this Court may have a clear understanding of the issues involved herein.

Briefly stated, petitioner claims that the District Court of the United States and the United States Circuit Court of Appeals erred in refusing to allow petitioner, the State of Louisiana, the right to prosecute an appeal from the judgment of the United States District Court for the Western District of Louisiana, which said judgment, in effect, ratified a fraud by granting the prayer of the Land Company to dismiss the said suit of the *Levee Board vs. said Land Company*, because of a payment of one hundred thousand dollars made by said Land Company to the Levee Board to put an end to the suit brought by the said Land Company against the Levee Board, which charged fraud in the sale of lands, after which payment the Land Company moved to dismiss the said suit and to ratify said compromise. To this the Attorney General filed a return that fraud could not be made the subject of a compromise, which objection was overruled, and the motion to dismiss granted. Thereupon, the State, claiming to be the owner of the lands involved in said suit, which it deeded over to the Levee Board merely as an agent, moved to be permitted to appeal from said judgment, as a matter of right and as a *quasi* party to the record. The District Court having refused to permit the filing of a petition for appeal, and the State having applied for relief to the United States Circuit Court of Appeals, which likewise denied the relief prayed for, the State now comes before this Court praying for a *certiorari*, on the unique facts presented in the petition herein.

The State contends that, in view of the showing made, it should be allowed an appeal from the judgment of the District Court for the Western District of Louisiana, the effect of which judgment was to take away, through fraud, lands of the State worth several million dollars.

RUFFIN G. PLEASANT,
Attorney General.

G. A. GONDRAN,
DANIEL WENDLING,
Of Counsel.

No. ——.

Supreme Court of the United States

OCTOBER TERM, 1915.

STATE OF LOUISIANA,

Petitioner,

versus

TENSAS DELTA LAND COMPANY, LIMITED,

Respondent.

BRIEF OF PETITIONER.

May It Please the Court:

The question of law presented by the record is this: Was the State, in view of the fact that the Levee Board discontinued and compromised its suit against the Tensas Land Company, in the United States District Court, entitled to prosecute an appeal from the said judgment, as provided by the Code of Practice of Louisiana, Article 571, on the ground, as averred in its petition for appeal, that it was aggrieved and injured by the said judgment, and because of its being a *quasi* party to the record?

This case was commenced in the Sixth Judicial District Court of Louisiana, and was removed by the Land Company to the United States District Court for the Western District of Louisiana. Had the case remained in the State court, we think the right of the State to appeal therefrom would have been absolutely beyond question, on the showing made by its petition for appeal, as the Code of Practice of Louisiana, Article 571, provides:

> "The right of appeal is given, not only to those who were parties to the cause in which a judgment has been rendered against them, but also to third persons, not parties to such suit, when such third persons allege that they have been aggrieved by the judgment."

And the points presented are as follows:

1. Was the State injured and aggrieved by the judgment of the District Court ratifying said contract

2. If so, can that statute be taken advantage of by the State of Louisiana in a United States court If not, is the State not entitled to appeal as a quasi party of record?

Our contention is that the District Court should have granted an appeal; that the United States courts have jurisdiction to enforce this new right or new remedy provided by said provision of the Code of Practice, or at any rate that the State was entitled to appeal as a quasi-party. We think the following authorities show this:

National Surety Co. vs. Bank, 120 Fed. 593, holding that:

> "The Federal Court sitting in equity has jurisdiction in an appropriate case to enforce the new right and administer the new remedy created by these provisions of the Code of Nebraska. Rights created

and remedies provided by the statutes of the States, to be pursued in the State courts, may be enforced and administered in the national courts, either at law, in equity, or in admiralty, as the nature of the rights or remedies may require." (Citing many cases.)

To the same effect is Foster's Federal Practice (4th Ed.), par. 7, page 15, where the author says:

"SEC. 7. STATE LAWS CREATING NEW RIGHTS ARE ENFORCED BY FEDERAL COURTS AT LAW OR EQUITY. If, however, the customary or statute law of a State has created a new right, the Federal courts will enforce the same at law or equity, if it falls within the remedies authorized by either branch of their jurisdiction.

"Such are statutes * * * authorizing a suit to set aside the probate of a will, or a will itself *for fraud* (*Broderick's Will*, 21 Wall. 503, and other cases), even though the statute provides that the suit shall be brought in a specified State court. * * * A Federal court will follow a State statute (page 17) 'authorizing an injunction to be granted in a new class of cases.' (*Cummings vs. National Bank*, 101 U. S. 153, 157, and other cases.) 'Federal courts of equity have followed statutes * * * creating and providing for the enforcement of a mechanic's lien. (*Davis vs. James*, 2 Fed. 618.)' That the summary method of foreclosing a mortgage under the Louisiana Code belongs on the equity side of the court (*Fleitas vs. Richardson*, 147 U. S. 538), and that the Louisiana statute authorizing a summary proceeding to set aside an incorrect assessment for taxation will be enforced pursuant to the chancery practice on the equity side of the Court. (*Lindsay vs. First National Bank*, 156 U. S. 485.)"

Same author, page 20:

> "When a State statute creates a new liability and provides that it can only be enforced in a specified tribunal, the Federal courts will enforce the liability, and reject the clause respecting the exclusive jurisdiction. (*Davis vs. James*, 2 Fed. 618.)"

The doctrine announced in the foregoing cases and authorities is in keeping with the principle, so often announced, that while State legislation cannot curtail equitable rights and remedies,

> "it must not be understood that the Federal courts of equity will not enforce new rights and remedies, or new remedies for old rights created by State legislation, after it has acquired jurisdiction."
>
> Simkins Suit in Equity (2nd Ed.), p. 17,

the author stating, on page 18, that it has been frequently declared that

> "A party, by going into the National courts, does not lose any right or appropriate remedy of which he might have availed himself in the State courts in the same locality."

As long ago as 1880, in *Davis vs. James*, 2 Fed. 618, the Court held that the Court would enforce, in an equitable proceeding, rights created by State statute the Court holding:

> "Decisions of the Supreme Court bearing upon the question seem clearly to determine that, even in a case where the right of action is originally derivable wholly from the State statute, which also designates the court in which such remedy may be enforced,"

the Federal courts would follow same.

The Court, further on, says:

> "The question is one involving the right to pursue a remedy. * * * And if, in the case where a right of action, whether it pertain to persons or property, exists only in virtue of, and is solely derivable from, a statute of a State, that statute also declaring that the remedy to enforce such right shall be brought in a court of the State—if, I say, in such a case the remedy may be enforced in a court of the United States, as has been distinctly held, I am unable to perceive why, in a case like that in hand, the remedy may not also be pursued in the Federal court, notwithstanding the State statute."

United States Bank vs. Lyon County, 48 Federal Reporter, 632, was a suit pending on the equity docket, the bill having been filed to recover a decree or judgment against defendant for bonds bought by the bank, issued by defendant, and which defendant refused to pay. Upon demurrer to the bill the Court found that the facts did not show a case for equitable relief, on the ground that complainant had an equitable remedy at law, and sustained the demurrer. Thereupon complainant filed a motion in said cause asking that the cause be transferred from the equity to the law side of the United States Circuit Court, which motion was based upon the provisions of the statute laws of Iowa, and the Court granted the motion, thus enforcing the procedure of the State court of Iowa. In the course of the opinion, the Court says:

> "Why may not this Court follow this statutory enactment as a proper rule of action, when it finds that a case, proper for an action at law, has been commenced in form of a suit in equity? * * * Why put the parties to the delay and expenses neces-

> sarily caused by a dismissal and recommencement of the proceeding, when the same can be saved by following the rule enacted in the State statute, and adopting the same as the proper practice in the Federal court?"

And the Court sustained the motion and ordered the case transferred to the law side of the docket.

In *Cowley vs. Northern Pacific Railroad*, 159 U. S. 569, it is held (syllabus):

> "If a special proceeding under Washington Code, par. 436, to vacate a judgment for fraud, be removed to a Federal court, the petitioner loses no right that he would have had, had it not been removed."

The case shows that, originally, a proceeding was brought by the railroad against Cowley, the appellant, to recover possession of land. The case being at issue was referred to a referee to take testimony, and on the day set for the hearing the land agent of the railroad made an oral offer to appellant's attorney to compromise the case by paying $8,000 cash, the attorneys, by their contract with appellant, to receive one-quarter thereof. The attorneys advised the acceptance of same, but Cowley refused, notwithstanding which refusal the attorneys accepted the compromise. Cowley refused to ratify same, and employed other attorneys, but his original attorneys insisted upon the payment of their fee, and went on and receipted for the $8,000 paid by the compromise, which was turned over by the railroad to a bank.

Thereafter, the appellant instituted suit in the District Court of the Territory, and afterwards proceeded with it in the Superior Court of Spokane, State of Washington,

after admission as a State. It was then removed to the United States Circuit Court, which rendered a decree dismissing the bill. Subsequently it was taken to the United States Supreme Court. The following quotation from the opinion is pertinent to the question involved in this case:

> 'The Court (United States Circuit) declined to consider it as a proceeding under the Code, saying that the rights of the parties and the limitations of their rights, in such a statutory proceeding, were quite different from the rights and limitations and the rules which must govern the decision **in a suit in equity,** and that the effect of a decision of judgment was entirely different."

Answering this conclusion of the lower Court, the Court says:

> "It would appear, however, in view of Section 440 of the Territorial Code, providing that the parties shall be brought into court in the same way, on the same notice as to time, mode of service, and mode of return, that the pleadings should be governed by the principles, and the issues made up in the form, and all the proceedings conducted, as in an original action by ordinary proceedings—that there was no impropriety in filing this petition or complaint as an original proceeding, or conducting the case in the ordinary method.
>
> " * * * In the case of *Gaines vs. Fuentes,* 92 U. S. 10, which was an action to annul an alleged will, brought under the laws of Louisiana, in the District Court of the Parish of Orleans, and removed to the Circuit Court of the United States, it was held that this suit was, in effect, an action between the parties, and that the Federal Court had jurisdiction. It was said that if the suit could be maintained in a State court, it might also be maintained by original

process in a Federal court, where the requisite diversity of citizenship existed.

* * * * * * * * *

"But while, after the removal of the case to the Circuit Court of the United States, it might properly be docketed and tried by the Court as an equity suit, it still remained, so far as the rights of the plaintiff were concerned, a special proceeding under the Territorial statute; and the powers of the Court in dealing with it were gauged, not merely by its general equity jurisdiction, but by the special authority vested in its own courts by the statutes of the Territory. Had the case never been removed to the Circuit Court, it would have proceeded in the State court as a special proceeding under the Territorial statute, and we are of opinion that, upon its removal to the Circuit Court, petitioner lost no right to which he would have been entitled had the case not been removed.

"Even if it were treated as in form a bill in equity, the right of complainant would be gauged as well by the statute under which the bill was filed as by the general rules of equity jurisprudence. If any action or proceeding in a State court were subject to be defeated or impaired by one of the parties exercising his statutory right to remove it to a Federal court, no one would be safe in instituting such a proceeding in any case wherein, by reason of diversity of citizenship or otherwise, it might be subject to removal. While the Federal court may be compelled to deal with the case according to the forms and modes of proceeding of a court of equity, it remains in substance a proceeding under the statute, with the original rights of the parties unchanged.

"Although the statute of a State or Territory may not restrict or limit the equitable jurisdiction of the Federal courts, it may establish new rights or

privileges which the Federal courts may enforce on their equity or admiralty side, precisely as they may enforce a new right of action given by statute upon their common law side."

The Court then cites several authorities in support of its conclusion, among them *Davis vs. Gray*, 83 U. S.; 16 Wall. 223, 231, to the effect that:

> "A party by going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality. The wise policy of the Constitution gives him a choice of tribunals." Citing other cases.

These authorities show that courts of equity follow State statutes of procedure, and, it seems to us, sustain the right of the State of Louisiana to take an appeal from the judgment of dismissal rendered by the respondent Judge, and, in this respect, we submit that the State should not be concluded by the trial Judge's assertion that he exercised a discretion in the matter. The State statute makes no exception. It gives anyone aggrieved a right to appeal from the judgment; and, as courts of equity grant relief in cases to prevent a multiplicity of suits, on the same principle ought the respondent Judge have granted an appeal, so that the State could appeal directly from the judgment rendered and not be subjected to the delay and expense of instituting a direct action.

As said in *U. S. Bank vs. Lyons*, 48 Fed., *supra*:

> "Why may not this Court follow this statutory enactment as a proper rule of action? * * * Why put the parties to the delay and expense necessarily caused by a dismissal and recommencement of

> the proceeding, when the same can be saved by following the rule enacted in the State statute, and adopting the same as the proper practice in the Federal court?"

And the principle announced in *Cowley vs. Railroad, supra,* that:

> "If any action or proceeding in a State court were subject to be defeated or impaired by one of the parties exercising his statutory right to remove it to a Federal court, no one would be safe in instituting such a proceeding in a case * * * subject to removal."

This is a wise and salutary rule.

The respondent's brief contains authorities to the effect that one who is not a party to the record and judgment may not appeal from a judgment rendered therein. We frankly confess the existence of such authorities in cases presenting wholly different facts than in the instant case, and, while the cases do not show it, we believe the said authorities to be good law in those States, perhaps, where there is an absence of the statutory procedure provided for by the Code of Practice of Louisiana, Article 571, and which article we contend this Court should enforce in the instant case, since it was removed from a State court.

In *West vs. Smith,* 101 U. S. (11 Otto) 263, it was held (syllabus):

> "Where a cause is removed from a State court to the United States Circuit Court, the latter Court may allow such amendments to be made to the declarration as would be allowable by the State practice."

In *U. S. vs. Conway,* 175 U. S. 60, it was held that an appeal may be taken by the United States from a decision by

the Court of private land claims in favor of a petitioner, although the Government had no interest in the result of the litigation.

All these authorities show that the United States courts follow the State practice. In addition to this, it may be remarked that the Levee Board is really a nominal party, since the lands are lands of the State, confided to the care of an instrumentality which is subject to the paramount authority of the State, and the State is, in a legal sense, a *quasi* party, and entitled to appeal. It is idle, it seems to us, to argue that the State has no interest in these lands simply because the State for convenience, has placed them in the name of the Levee Board. The State could abolish this Board at any time, upon the happening of which the lands in controversy would revert to the State. The Levee Board is simply an agent of the State in order to better handle a portion of its sovereignty.

Also the people of the State will be compelled to pay more taxes for the support of the Tensas Levee District if the property in contestation be not recovered. A tax of nearly one mill is levied throughout the entire State in support of the levee districts, although the hill portions of the State have no more need for levees than the hill portions of Alabama or Massachusetts.

In *Norfolk, etc., Turnpike Co. vs. Virginia*, 225 U. S. 264, the motion to dismiss was based on the contention that the Commonwealth of Virginia was not made party to the appeal. The Court sustained the appeal of the turnpike company, saying:

> "Although * * * not named as a party to the proceedings initiated by the Judge of the Circuit Court, it is not claimed that those proceedings were

> not in reality begun and prosecuted on behalf of the Commonwealth, which in effect must have been the conclusion of the Court below."

Of course, in order to appeal, the State must be aggrieved. That the State has been aggrieved by said judgment is, to our minds, too plain for argument. Counsel for respondent differ with us in this view, and they cite the Court to the decision of the Supreme Court of Louisiana in *State vs. Tensas Land Co.*, 126 La. 59, in support of their contention that the State of Louisiana has no interest—that being the suit in which the State sought to set aside the sale of these very lands.

The Court did dismiss the petition of the State in that case, but the reason for the dismissal will be shown, by a careful reading of the opinion, to be based upon the fact that the State, in its petition, prayed that the lands, which stood in the name of the Levee Board on the conveyance records, "be decreed to belong to the State, and be delivered to the State," which the Court held it could not do, because the effect of granting such a prayer would be to take away those lands from their legitimate custodian, the corporation to which the Legislature had given them, and under whose control the Legislature provided they should be, and turn them over to the State by decree of Court, thereby frustrating and nullifying an admittedly valid act. But the Court found that, if the governing body of this corporation failed to bring the suit, the Courts may allow any citizen or taxpayer to bring the suit;

> "and in such a case the same privilege might, for the same reason, be extended to the State. * * * There is no suggestion that the Board of Commissioners of the district * * * is unwilling to do so. In fact, the Court knows the contrary from the public prints."

Thereafter the Levee Board brought suit, but, notwithstanding the charges of fraud, failed to prosecute it. On the contrary, it compromised the charges of fraud for a money consideration; and, notwithstanding the protest of the Attorney General, filed in response to the order to show cause rendered by the respondent Judge, the Court ratified said compromise.

Then it was that the State of Louisiana filed its petition for appeal to the United States Circuit Court of Appeals.

It was not the intention of the Court, in the opinion rendered in *State vs. Tensas Land Co.*, to hold that the State has absolutely no interest in the fraudulent sale of lands made by a levee board, but that it could only have a standing in court where the Levee Board failed in its duty to bring a suit. Now, the Levee Board did bring the suit, but it compromised the same, and the State has attempted to step in, in keeping, as we think, with the ruling of the Supreme Court of Louisiana, in order to prosecute the suit which the Levee Board has failed in its duty to prosecute. That the State has an interest in these lands is further plainly shown by the Constitution.

Article 58 of the Constitution of 1898 provides:

> "The funds, credit, *property* or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation, public or private."

The above article also appears in the Constitution of Louisiana for the year 1879. In *Orr vs. New Orleans*, 50 An. 88, the Supreme Court held that this prohibition "removes from the General Assembly the power, through any delegation from it, to confer authority upon parishes or cities in

the State to make them," and that grants based on such delegation would be null and void.

If the argument be that the State has irrevocably divested itself of all interest in these lands, it seems to us the mere reference to this article and construction thereof is sufficient to show the fallacy of this contention, and that the Supreme Court did not mean to hold that the State had no beneficial interest in them, since the State could abolish this Board at any time, but that it was intended to hold that the State could not proceed unless the Levee Board declined to proceed. The Board is merely an agent of the State (122 La. 615), and, as was held by Judge Shelby, as the organ of the court when this case was before the Court of Appeals, the Levee Board is "acting in a fiduciary capacity" and "suing for the benefit of the public before the rights of third parties have attached" (204 Fed. 745), under which state of facts the Court held it "should be reluctant to deprive it of relief." The State contended, and now contends, that the Levee Board's compromise of this case was against public policy, and hence attempted to appeal from the judgment rendered ratifying the compromise, on the ground that it and the public were thereby injured and aggrieved; and we submit that the State had an interest in appealing, and has shown its interest in the petition for appeal filed in the respondent's court, for the interest of the State, the public and the Levee Board go arm in arm; that which is detrimental to a levee board is likewise detrimental to the State and the public, and *vice versa*. In fact, in *Fisher vs. Levee Board*, 39 An. 453, the Supreme Court of Louisiana went so far as to hold that it failed to see how a levee board,

> "created by the State as one of its functionaries, charged with the duty of providing for the general

welfare of the people by protecting them from inundation, could, by any reasoning, be considered as an association or corporation distinct from, and independent of, the State within the intendment of the prohibition contained in Article 56 of the Constitution, when it says: 'The funds, credit, property, or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged, or granted to or for any person or persons association or corporation, public or private.' "

As late as *Little vs. Williams et al.*, 231 U. S. 335, this Court held the State's title, in instances like these, paramount:

"Assuming that the inchoate title had been passed to the Levee District under the act of 1893, was the district in any better situation than the State? The answer turns upon the relation of the one to the other. The district was a mere political subdivision of the State created by the latter and invested with authority to construct and maintain levees to protect lands within its limits from overflow by the waters of the Mississippi River, and to levy and collect taxes and take other measures to that end. (Laws Arkansas, 1893, pp. 24, 119.) It was essentially a subordinate agency of the State, was exercising a power of the State for its convenience, could have no will contrary to the will of the State, held its property and revenues for public purposes, and was in all respects subject to the State's paramount authority. In view of this relation, we are quite clear that the State's action was binding upon the district, and that the latter could not, by its subsequent deed to the plaintiff, invest her with a title which it no longer possessed. In this respect the case is not distinguishable from *Rogers Locomotive Mach. Works vs. American Emigrant Co.*, 164 U. S. 559, 577 (41 L. Ed. 552, 559; 17 Sup. Ct. Rep. 188)."

If the Levee Board is subject to the State's paramount control, so are the lands standing in its name, and the State's right of appeal from said compromise should be recognized in this case, the position of the Levee Board being that of a *quasi* party, as recognized by the Supreme Court of the United States in *Williams vs. Morgan,* 111 U. S. 684.

The right of appeal of the State in this case is similar to that taken in the said case of *Williams vs. Morgan,* in which case Williams took an appeal from a decree in the Circuit Court for the foreclosure of a railroad, fixing the compensation to be paid to the trustees under the mortgage from the funds realized from the sale, in which the Court held that Williams, a holder of railroad bonds, secured by mortgage, under foreclosure, had an interest in the amount of the trustee's compensation which entitled him to intervene and contest it and appeal from an adverse decision. The Court referred to Williams and Thompson, the appellants, as "*quasi* parties." Said the Court:

> "We think that the position of Williams and Thompson made them *quasi* parties in the case, and brought them within the reason of the former cases decided by this Court in which persons incidentally interested in some branch of a cause have been allowed to intervene for the purpose of protecting their interest, and even to come into this court, or to be brought here on appeal, when a final decision of their right or claim has been made by the Court below."

Citing, among other cases: *Sage vs. Railroad,* 96 U. S. 712, where parties interested were allowed to appeal from an order confirming a sale; *Trustees vs. Greenhow,* 105 U. S. 527, where an appeal from an allowance of costs

and expenses, suing on behalf of a trust fund, was sustained; *Hovey vs. McDonald*, 109 U. S. 150, where an appeal was allowed to be brought against a receiver from an order made in his favor.

In *Blossom vs. R. R.*, 1 Wall. 635, it was held that a purchaser or bidder at a master's sale subjected himself *quo ad hoc* to the jurisdiction of the Court, and became so far a party to the suit, by the mere act of making a bid, that he could appeal from any subsequent order of the Court affecting his interest.

If a bidder at a Marshal's sale may appeal, because of his interest in the subject-matter, why may not the State because of its interest in land which it claims an agent has turned over to a company in compromise of a matter alleged to be against public policy and to the injury of itself and the public.

We have not been able to find a similar case in the books. In the first place, the bill charged fraud, which vitiates everything. The Levee Board came into court setting up the fraud practiced by the Land Company, and then compromises the case, without the State's consent. There has not been a decree on the merits passing on the question of fraud *vel non*, the Levee Board having compromised the same before the merits of the case was reached. The Attorney-General protested against the Court ratifying the compromise, and then sought to appeal on behalf of the State from the judgment, on the ground that its agent had ratified a contract against public policy, and to its injury. In such a case, if there be no precedent for an appeal, on account of the importance of the issues and the fact that a fraud is sought to be unearthed, the establishment of a precedent for an appeal in such a case as this would not be without good results, particularly in view of the fact that

the statutes give such a right of procedure in a State court. Courts of equity are constantly establishing new precedents to meet changed conditions, and in such a case as this, where the State is virtually the Levee Board, suing for the interest of the public, the creation of such a precedent, if none should exist, would be a step in the right direction. "This suit does not stand," as said by Judge Shelby on a branch of this very case, "like a suit between private parties. The plaintiff is a public corporation charged with the management and sale of a vast area of real estate," and because of the fact that it was held to be a public corporation the Court made a distinction for that reason (204 Fed. 745), citing *U. S. vs. Minor*, 114 U. S. 230, 240, in support thereof. When we examine this cited case we find, in the said opinion, this significant statement, involving, too, a case of **fraud:**

> "When, therefore, he succeeds by misrepresentation, by fraudulent practices, aided by perjury, there would seem to be more reason why the United States, as the owner of land of which it has been defrauded by this means, should have remedy against *that fraud*—**all the remedy the courts can give**—than in the case of a **private owner** of a *few acres* of land on whom a like fraud has been practiced";

showing that in matters which concern the Government the Courts go the limit to unearth fraud—"all the remedy the courts can give."

On page 31 of the brief for respondent, referring to the State's want of right to take an appeal in the District Court, counsel say:

> "If the State of Louisiana has any rights therein, an independent suit lies in the name of the State to enforce those rights."

And yet, on page 12 of their brief, in striking contrast to this, they say:

> "The State of Louisiana is without legal interest in the subject-matter of this suit, and has no authority in its own name or right to carry on the litigation, and it was so specifically held by the Supreme Court of Louisianan in the cause entitled *State vs. Tensas Delta Land Co., Ltd.*, reported in 126 La. 59."

Thus the State, if the contention of counsel be correct, is placed in the anomalous position of having no remedy for a wrong done to its own property—no remedy by appeal in this proceeding, and none by an independent action should this Court refuse the State the relief prayed for.

Could there be a case presented calling more loudly for the interposition of a court of equity in behalf of the relief prayed for than this?

The contention of counsel that the State must tender the money paid by it in compromise is untenable, and was so declared by this Court when this case was on appeal, the Court observing (204 Fed. 741) that:

> "It was not necessary to make such tender. The bill shows that the defendant has sold part of the land which was conveyed to it by the plaintiff, and the plaintiff is seeking by this suit not only to annul the deeds, * * * but also to recover more than $480,000," etc.
>
> Citing *State of Texas vs. Snyder*, 66 Tex. 687.

There seems, from the very first, to have been a predetermination never to let this case go before the courts on

the merits, as every means possible has been resorted to in order to prevent it.

Perhaps your Honors have not had before you, for many years, from this State, a case which involves property of greater value than that which is the subject of contestation in this suit. It embraces nearly a million acres of land, and is worth, perhaps, seven and one-half million dollars.

But this is not the only thing of value in this case. That which is of far greater importance is the dignity of this Commonwealth, and the honor, manhood and high purposes of her citizenry, and we would impress upon your Honors that, with the exception of a few persons directly interested, the people of the State are unanimous in their vehement expressions of disapproval against this compromise of the public honor.

The State feels, under the peculiar circumstances of this case, that it has a right to appeal from the action of her subordinate agent and from the decision of the Court which ratifies that action and makes it the basis for a judgment, which, unless reversed, will put a subordinate agency of the State on record as being not inimical to a fraud as such, but which is willing for fraud to be committed by its own predecessor, in order that such an illegal action may be used as the basis for obtaining a little hush money from the other party to the said fraud, in defiance of the express terms of the laws of the State, which absolutely provide that, in such cases, the fraud-contract must be set aside, and the property which is the basis thereof must be returned to the Government, or its proper agent.

There is no doubt that the compromise herein complained of is against the public policy of the State of Louisiana.

> Old Civil Code La., Arts. 11, 12, 1885, 1886, 1887 and 1889; *Cummings vs. Saux*, 30 An. 207; *Davis vs. Holbrook*, 1 La. An. 176; *Schmidt vs. Barker*, 17 La. An. 261; *Bernard vs. Auguste*, 1 La. An. 69; *Hardie vs. Scheen*, 110 La. 612.

When seeking to determine the public policy of a State, the principal sources of information are the State Constitutions and Statutes, and the decisions of the Courts, State and Federal; and, in case of a divergence between them, the decisions of the State Courts must be accepted as the best evidence.

> Elliott on Contracts, page 11, paragraph 651, citing *Hartford Co. vs. Chicago, etc., R. Co.*, 62 Fed. 304; *Vidal vs. Girard's Excutors*, 2 How. 127.

Although the question is not before the Court, we append hereto some authorities which show beyond question that the compromise of this case was against public policy.

In *Reeves vs. Butcher*, 31 N. J. L. 224, the Court says:

> "There can be no such thing in law, strictly speaking, as a ratification of a transaction which, at the time of its performance, was prohibited by statute. The parties cannot legalize that which the law has declared illegal."

Comstock vs. Draper, 53 Am. Dec. 80:

> "It is a well-settled doctrine in the English and American books that an illegal transaction cannot constitute a good consideration for a promise. If the connection between the original illegal transaction and the new promise can be traced, if the latter is connected with and grows out of the former, no matter how many times and in how many different forms it may be renewed, it cannot form the basis of a recovery, for repeating avoid promise cannot give it validity."

In *Comstock vs. Bower,* 4 Wesson & Welsby's Reports, 361, a petition having been presented to the House of Commons against the return of one Fector, alleging that he had been guilty of bribery and corruption and other illegal practices in the said election, and that the return of the said Fector had been obtained by bribery and other illegal practices, and praying that the said election and return might be declared null and void, which petition was abandoned in consideration of £500 and other stipulations. Payment of same being declined, suit was brought for its recovery.

Lord Abinger, Chief Baron, disposing of the case, says:

> "Here was a petition presented on a charge of bribery. Now this is a proceeding instituted not for the benefit of individuals, but for the public—and the only interest in it which the law recognizes is that of the public. I agree that if the person who prefers that petition finds, in the progress of the inquiry, that he has no chance of success, he is at liberty to abandon it at any time. But I do not agree that he may take money for so doing, as a means and with the effect of depriving the public of the benefit which would result from the investigation. It seems to me

as unlawful to do so as it would be to take money to stop a prosecution for a crime. In either case the prosecutor might say that he is not bound, at his own expesse, to continue an inquiry in which the public alone are interested; but such a reason does not amount to an excuse where he receives money for discontinuing the proceedings. Without saying whether it was unlawful to receive money as a consideration for constraining a future election, it is enough in the present case to determine that a contract for money to abandon a petition for bribery was illegal."

And Parker, B., delivering a separate opinion, said:

"I am of the same opinion. * * * I think that such an agreement is unlawful, because the penalty imposed on a member for bribery is a penalty imposed for the benefit of the public, and the case is the same as that put by Lord Chief Baron, of money taken by an individual to stop a prosecution."

Pierce vs. Kibbee, 51 Vt. 559: In this case a note and mortgage, given in lieu of notes and mortgages given to compound a felony, were held invalid.

In *Simmons vs. Kelsey,* 76 Neb. 124 (107 N. W. 122), the facts show that Mrs. Simmons, the plaintiff, inherited about $25,000 from a brother, about $18,000 of which was ready for distribution and was to be paid over to her on or about January 7, 1903. At about said date, and before Mrs. Simmons had received any portion of the inheritance, one of her daughters instituted proceedings in the County Court for the appointment of a guardian for her, alleging as ground therefor that Mrs. Simmons was not of sufficient mental capacity to have the care and management of her

property. While such proceedings were pending, the plaintiff, Mrs. Simmons, entered into a contract with her husband, children and certain of her grandchildren, issue of deceased daughters, whereby she surrendered all of her estate, save less than $3,000, to such children and grandchildren, and the amount reserved was placed practically beyond her control.

After this contract was signed, the procedings for the appointment of a guardian were dismissed.

In pursuance of the contract just mentioned, about $8,000 of the plaintiff's inheritance was collected and distributed among the children and grandchildren.

Afterwards the plaintiff commenced this suit against the other parties to the contract for a cancellation thereof, alleging that it was made by her without any consideration, and that her consent thereto had been procured by undue means, employed by the defendants, to that end.

The defendants answered, setting up the contract executed as above set out, averring that the contract was founded on a sufficient consideration and a subsequent ratification, etc.

After disposing of some preliminary questions, the Court, coming to the merits, says:

> "Whatever may have been the motive that induced such proceedings, the record leaves no room for doubt that they operated to disturb and harass the plaintiff, and that she was exceedingly anxious to have them dismissed. * * * No consideration moved to the plaintiff, save the dismissal of such proceedings. Obviously that was not a valid consideration, because, if the proceedings were well grounded and brought in good faith, public policy required that they be pushed to a conclusion. If

groundless, and not brought in good faith, public policy would again interpose and require their dismissal, *and that, too, without consideration. In neither case would the party instituting the proceedings be permitted to use them as a source of profit to herself.* The fact that after instituting such proceedings she was one of the parties to undertake to bind the plaintiffs by the contract in suit, involving a large estate, reflects somewhat on the good faith with which the charge of mental incapacity was preferred.

"The finding, then, that the contract was procured by undue means and without consideration, is sufficiently sustained by the evidence and justifies the decree, not only as to such of the defendants as made use of such means to procure the contract, but as to all who seek to profit by it.

"We note that the defendants resisting the suit urge that the contract has been partially performed on their part. Such performance, aside from the dismissal of the proceedings for the appointment of a guardian, which we have already noticed, consists of the appropriation by the defendants of a large portion of the plaintiff's estate. It is hardly necessary to add that such acts of performance do not stand in the way of a cancellation of the contract."

Elliott, in his very recent work on Contracts, paragraph 719, page 69, says:

"Agreements relating to civil procedings and involving and providing for anything inconsistent with the full and impartial course of justice therein, or those that tend to pervert the course of justice or its pure administration by the courts, are illegal." (Citing cases.)

"In case public interests are involved in a civil suit, it **cannot be compromised in derogation to the interests of the public."**

Springfield Fire & M. Ins. Co. vs. Hull, 25 L. R. A. 41, is a case where the plaintiff suffered a total destruction of her premises by fire, but was induced by threats to accept less than the real damage. The Court held she was either entitled to all or to none, from the facts shown, and it came to the conclusion that the contract was void and that the plaintiff was entitled to the whole amount, and that it was not necessary to make a tender. On the question of tender the Court says:

> "Besides the contract being void because resting upon an illegal consideration, its refutation by one party does not give the other a right to have restored to him what he parted with under it; nor does the retaining by the party of what he has received amount to a ratification of the contract by him. Such contracts have no validity from the beginning, are capable of receiving none by any ratification, however deliberately and formally made; for any attempted ratification must necessarily be as ineffectual as the original contract, because as illegal. The law does not recognize the right of the parties to contracts of that nature to either have them enforced or have a return of what has been parted with in their performance; it denies both; and, hence, there can be no proper application, in such cases, of the rules which govern the rescission of contracts."

In *Beard vs. Beard*, 65 Cal. 356, (4 Pac. 229), it appeared that the plaintiff transferred real and personal property to the defendant in consideration of her executing to him four notes, and securing the payment of the same by a mortgage, and *abandoning her defense* in an action of divorce then pending between them, and doing nothing to resist or prevent or delay him in obtaining a decree of divorce

therein. He seeks in this action to recover the amount so secured. The defense is that the notes and mortgages are so tainted by fraud that a Court ought not to enforce them.

The Court says:

> "The agreement between the parties in the divorce proceedings was clearly collusive—'a secret agreement and co-operation for a fraudulent purpose.' The decree of divorce obtained in pursuance of it was obtained through fraud on the Court. If the Court had been advised of that agreement it would not have granted the divorce."

Continuing, the Court says:

> "In *Barnes vs. Barnes*, L. R. 1 Prob. & Div. 505, a decree *nisi* had been rendered, when it was made to appear to the Court that the petitioner had, in substance, said to his wife, the respondent: 'If you don't oppose, I shall get a divorce cheaper than if you do; therefore, keep quiet, and I will give you some money when the decree is obtained, and I will do no harm to the co-respondent.' The decree was rescinded and the petition dismissed, Creswell, J., remarking:
>
> " 'If that is not collusion, I do not know what is.'
>
> "It would not be 'collusion' within the definition of that term in our court (Civil Code, 114), but it would be none the less a fraud on the Court, and in contravention of the policy of the law. The law-making powers, for reasons which it is unnecessary here to state, have made a distinction between divorce and other cases by declaring that 'no divorce can be granted upon the default of the defendant.' (*Id.* 130.)
>
> * * *
>
> "And the objection is not obviated by the suggestion that for anything which appears the *defendant may have had no defense* to the action in which

the divorce was obtained. It appears that she filed an answer denying the allegations which constituted the ground for a divorce, and that she *abandoned her defense.* Whether a divorce would have been granted if she had not is quite immaterial. * * * We shall confine our investigation to what was done, and will not inquire what might have been the result of a fair trial of the issues. **If, on the *bona fide* trial, the plaintiff** could have established the allegations of his complaint, there was no occasion for his procuring an abandonment of the defense. * * *

"In this case the agreement of the defendant to abandon her defense in the divorce case, and to give the notes and mortgage, were parts of one and the same transaction, and constituted the consideration of the transfer of the property by the plaintiff to her. And we are warranted in assuming that the transfer would not have been made if the defendant had not agreed to abandon her said defense, as well as to execute the notes and mortgage.

"As we view it, this case is clearly within the reason of the maxim, '*Ex turpi causo non oritur action.*' The entire transaction between the parties is tainted by fraud, and the plaintiff must content himself with so much of the benefit of it as he has already secured unchallenged. The reason why the common law says such contracts are void is for the public good, and we think that the public good requires that this transaction should be held to be void in all its parts. It was a contract which contemplated the perpetration of a fraud upon a court of justice, and we think it the duty of Courts to discountenance and discourage such transactions to the utmost limit of our power."

See, also, *Tappan vs. Brewing Co.*, 5 L. R. A. 428.

The statutes creating the Tensas Levee Board gave it no power to compromise fraudulent transactions. Indeed, the control of all cases involving "the titles to any land or real property belonging to the State of Louisiana, **or any of its political agencies or subdivisions,** whether the title to said lands or real property is vested in or appears in the name of the State or in the name of **any of its political agencies or subdivisions,**" is vested in the Governor and the Attorney-General by Act No. 3 of the Extra Session of the 1910 Legislature. These officials took control of this case, and neither of them has ever consented to the compromise thereof. The Levee Board had no authority to make the compromise.

See *Board of Health vs. Teutonia Bank*, Vol. 68 So. Rep., No. 9 (Ad. Sheets), 748, holding the Board of Health without authority to compromise.

Keeping in mind that a fraud has been committed, and that the interests of the public are at stake, we ask, in conclusion, that the writ of certiorari prayed for be granted, and that the Court enter judgment permitting the State of Louisiana to prosecute an appeal from the judgment ratifying the said compromise, and reversing the judgment of the United States Circuit Court of Appeals and United States District Court.

Respectfully submitted,

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No. ——.

Supreme Court of the United States

OCTOBER TERM, 1915.

STATE OF LOUISIANA,

Petitioner,

versus

TENSAS DELTA LAND COMPANY *ET ALS.*,

Respondents.

On Petition for a Writ of Certiorari to the Circuit Court of Appeals of the Fifth Circuit.

BRIEF IN OPPOSITION TO THE ALLOWANCE OF THE WRIT.

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STATE OF LOUISIANA,

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Respondents.

APPENDIX TO BRIEF OF RESPONDENTS IN OPPOSITION TO ALLOWANCE OF WRIT OF CERTIORARI, CONTAINING SUBJECT DIGEST AND LIST OF CASES CITED.

SUBJECT DIGEST.

FIRST. This Court will not grant a writ of certiorari to the United States Circuit Court of Appeals to review its decision, rendered nearly a year before the date of the application to this Court, when the decision of the Circuit Court of Appeals had passed beyond its control by the conclusion of the term at which the decree was entered, where no rehearing was asked in that court, and no application for delay was asked to give the party an opportunity to apply to the Court. Particularly is this true in a case where the decision of the Court of Appeals was one affecting its own appellate jurisdiction in a case between citizens of different States involving no Federal question.

Pages 2 and 3.

SECOND. Special and detailed statement of facts.

Pages 4 to 16, inclusive.

THIRD. Even if the procedure on appeal in a court of equity of the United States were governed by the provisions of the Louisiana Code of Practice, the State has not made out its case as required by the settled jurisprudence of Louisiana interpreting Article 571 of that Code.

Pages 17, 18 and 19.

FOURTH. But the Louisiana Code of Practice, in regard to appellate procedure in the courts of that State, has no application whatever to proceedings by appeal or by writ of error in courts of the United States.

Pages 19 to 22.

FIFTH. The State of Louisiana was no party to the record in the United States District Court in the case of *Board of Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Co., Ltd.*

It was not a party expressly. Nor was it a party impliedly, or a *quasi* party, because it had no interest of its own which it could stand in judgment on as an express party. Its rights as a *quasi* party could not be greater than its rights as a direct party.

Page 22.

SIXTH. The State of Louisiana is without legal interest in the subject-matter of this suit, as decided by the Supreme Court of Louisiana in the case of *State vs. Tensas Delta Land Co., Ltd.*, 126 La. 59, and, hence, has no right to intervene.

Pages 23 to 30.

SEVENTH. Not being a party to the record in the United States District Court, nor to the decree entered by request of complainant and defendant dismissing the cause under a compromise between them of the issues involved, the State had no right to appeal from that decree.

Pages 30 and 31.

EIGHTH. No appeal lies from the order denying the State leave to intervene in the case—an application made after the decree dismissing the cause became final by the elapsing of the term of the court at which it was rendered—and inasmuch as the leave was denied, and the State of Louisiana never became party to the cause, it follows that no appeal lies from the order dismissing the suit.

Pages 31 to 45.

NINTH. The Levee Board acted in unquestioned good faith in entering into the compromise of the suit between it and the Land Company; and, inasmuch as the public interests in these lands were confided by law to that body, it is clearly within the discretion of the trial Court to deny to all others the right to intervene and appeal, leaving to the State to protect any interest it might have by a direct action.

Pages 45 to 52.

TENTH. The fact that the Attorney-General was by law the counsel of record of the Levee Board does not give him the right to appeal the cause or to carry on the litigation contrary to the will of his cilent.

Pages 52 to 61.

ELEVENTH. The law favors the compromise of disputed claims, and the Civil Code of Louisiana makes express and detailed provision therefor.

Pages 61 to 67.

TWELFTH. A charge of fraud in a bill to recover lands, denied in detail under oath, does not take away the right of the Levee Board to compromise the suit.

Pages 67 to 76.

THIRTEENTH. The Land Company, in compromise of the suit, paid the Levee Board $100,000, which went to the Levee Board's credit in the State treasury. This compromise was a new contract, and in no event could the compromise be rescinded except upon the repayment of this sum to the Land Company and the parties restored to the *status quo*. This rescission cannot be had by an appeal by the State from the order dismissing the original litigation compromised. The State has made no offer to repay the sum, the repayment of which is a condition precedent of any action to set the compromise aside, directly or indirectly.

Pages 76 to 82.

FOURTEENTH. Attention again called to the fact that no attack is made on the compromise of July 11, 1913, between the Levee Board and the Land Company, except the bare assertion of the Attorney-General that it was the compromise of a fraud, when the questions in issue were fraud *vel non*, and whether, if there were fraud, the action to recover the lands was barred by the limitation of ten years. The good faith, business judgment and the conduct of the Levee Board in making the compromise are not impugned in any manner.

Page 82.

FIFTEENTH. The claim that Act No. 3 of the Extra Session of 1910 took away from the Levee Board, and from the State, and from every political subdivision of the State, all control over all litigation over lands when the Governor directed the Attorney-General to sue for the recovery of lands, is without warrant in law or in fact.

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On Petition for a Writ of Certiorari to the Circuit Court of Appeals of the Fifth Circuit.

BRIEF IN OPPOSITION TO THE ALLOWANCE OF THE WRIT.

GENERAL STATEMENT.

By this proceeding, R. G. Pleasant, Attorney General of the State of Louisiana, in the name of the State of Louisiana as the litigant, seeks by *certiorari* to get this Court to

review the decree of the United States Circuit Court of Appeals for the Fifth Circuit, entered on October 29, 1914, denying his application for writs of mandamus and *certiorari* to the United States District Court for the Western District of Louisiana, to compel the Judge of that court to allow a petition of intervention to be filed by the State of Louisiana and an appeal to be granted to the State to the said Circuit Court of Appeals from a final decree entered by the United States District Court for the Western District of Louisiana on October 21, 1913, in the case styled *"Board of Commissioners of the Tensas Basin Levee District vs. The Tensas Delta Land Company, Limited."*

This Honorable Court was in session when the decree of October 29, 1914, was entered by the United States Circuit Court of Appeals refusing to permit an appeal to itself in a case between citizens of different States, not involving any Federal question, and of which it had sole jurisdiction on appeal. This Honorable Court remained in session for seven months after the decree complained of was entered. The Circuit Court of Appeals likewise remained in session for eight months after this decree was entered, and no application was made to it for a rehearing. This decree thus became final in the Circuit Court of Appeals, and by the expiration of the term at which it was rendered, passed absolutely beyond the control of that Court.

Will this Honorable Court at this late date issue a writ of *certiorari* to review the decision of the Circuit Court of Appeals?

We respectfully submit that it will not.

True, there is no limit of time placed by law within which this Court must exercise its power to issue such writ, but it has been generally held among the profession that

the writ must be applied for before the decree passes beyond the control of the Circuit Court of Appeals, and the practice has prevailed to apply to that Court for a delay in which to apply to this Honorable Court for a writ of *certiorari*, which delay is invariably granted. No such application was made in this cause.

We know of no precedent for a proceeding like this.

No explanation is tendered for delaying this application from October 29, 1914, to October 11, 1915.

Nor was there any explanation for delaying from October 21, 1913, the date of the entry of the decree in the United States District Court to April 6, 1914, the filing of the application of the State to intervene in the cause and to appeal from the decree.

The State had ample opportunity to intervene in the cause before the final decree was entered. The compromise complained of was made July 11, 1913. The Attorney General, in his capacity as attorney of the Levee Board, was notified on July 19, 1913, by a formal rule taken on him, that the compromise would be pleaded as a termination of the cause. He had three months before the hearing of this rule came on to intervene in behalf of the State. He not only did not make application to intervene during that period before the entry of the final decree, but he waited until the delay for appeal from that decree had expired to within fifteen days of the six months' limit before he sought to intervene and appeal.

From these and the other unexplained delays in taking action in the case, it would appear that the Attorney General of Louisiana sought to make the cause *"a linked sweetness, long drawn out."*

SPECIAL STATEMENT OF CASE.

The Board of "Commissioners of the Tensas Delta Levee District" was by various acts of the Louisiana Legislature (Act No. 26 of 1884, Act No. 59 of 1886, and Act No. 77 of 1888) "constituted and created a body politic, with corporate powers, to sue and be sued in their corporate capacity, to have a seal, to levy taxes and assessments, and to issue and sell its corporate bonds." The object and purpose of the corporation was to develop, establish and complete, either within or without the State, a system of levees and other works of public improvement designed to aid in protecting from floods and overflows property in the Tensas Basin Levee District, composed of certain parishes situated in the basin of the Tensas River.

Warrant for this legislative action is found in Article 214 of the Louisiana Constitution of 1879.

It was provided by Act 77 of 1888, that "in order to provide additional means to carry out the purposes of the corporation," all the lands then or thereafter owned by the State within the district, both those granted to the State by the United States, and those forfeited to the State for nonpayment of taxes "*are hereby given, granted, bargained, donated, conveyed and delivered*" unto said Board. The Auditor and Register of the State Land Office were required

> "*on behalf of and in the name of the State, to con-*
> "*vey to said Board of Levee Commissioners, by*
> "*proper instrument of conveyance,* the lands hereby
> "granted or intended to be granted and conveyed to
> "said board, whenever from time to time said Audi-
> "tor and said Register of the Land Office, or either
> "of them, shall be requested to do so by said Board
> "of Levee Commissioners or by the president thereof;

"and thereafter said president of said Board shall "cause said conveyances to be properly recorded in the "Recorder's office of the respective parishes where- "in said lands or any part thereof may be located, and when said "conveyances shall be recorded the title to said lands "with the possession thereof, *shall from thenceforth* ***"vest absolutely in said Board of Levee Commis- "sioners, its successors or grantees.*** * * * "Said Board of Levee Commissioners shall have the **"power and authority to sell, mortgage, pledge or "otherwise dispose of said lands in such manner "and at such times and for such prices as to said "Board shall seem proper."**

The lands thus conveyed to this Board consisted on the face of the record of 885,040 acres, but the large majority of the lands were held by the State as forfeited to it for taxes. In the sworn answer filed by the Tensas Delta Land Company, Limited, in this cause it appears that the Levee Board had title to only 580,000 acres of the land thus conveyed, of which 20,000 acres were absolutely worthless.

In November, 1898, ten years after the grant was made, the Levee Board, having tried in vain to sell these lands for fifty cents an acre, sold *without any warranty* whatever, the lands it had received from the State, to the Tensas Delta Land Company, Limited, a Michigan limited partnership, composed of non-residents of the State of Louisiana, for $130,000, paid $30,000 cash and the balance in one, two and three years, with six per cent. per annum interest.

On November 6, 1909, *eleven years after the sale was made, and after the lands had become valuable because of the growth of the country, and after the building of levees with funds obtained from the sale of the lands and from the large special taxes and assessments levied upon them by the*

Tensas Delta Levee District, and after eight of the persons connected with the transaction were dead, the State of Louisiana brought a suit in her own courts to set this sale aside and to recover the unsold lands and the proceeds of the lands sold.

The grounds of this action were that the sale was brought about by fraud and inferential bribery; that, if the sale was not fraudulent, it was a disguised donation, and if not a disguised donation, it was annulable for *lesion beyond moiety.*

To this action defendant pleaded that the State was without interest and could not maintain the action. This plea was sustained and the suit dismissed. The State appealed to the Supreme Court of Louisiana, which affirmed the judgment of dismissal. Application for rehearing was made and denied.

This case is reported in 126 La. 59.

After the above decision became final the Board of Commissioners of the Tensas Delta Levee District, on July 14, 1910, adopted a resolution directing its attorney, M. C. Thompson, to bring suit in its name to recover these lands, and to get into communication with the Attorney General and with him to prepare, file and prosecute said suit.

After this action had been taken by the Levee Board, the Legislature adopted Act No. 3 of the Extra Session of 1910, approved August 19, 1910, which provides that:

> "It is hereby made the duty of the Attorney Gen-
> "eral of the State, upon the request of the Governor,
> "to represent the State, or political agency or sub-
> "division of the State, in any suit in any court in-
> "volving title to any land or real property belonging
> "to the State of Louisiana, or any of its political

"agencies or subdivisions, whether the title to said "land or real property is vested in or appears in the "name of the State, or in the name of any of its po- "litical agencies or subdivisions."

Acting upon this statute, the Governor on January 4, 1911, directed the Attorney General to institute suit for the recovery of these lands "*for the use and benefit of and in the name of the Tensas Basin Levee Board.*"

On September 15, 1911, the Tensas Basin Levee District, appearing by its attorney, M. C. Thompson, under the above mentioned resolution of July 14, 1910, and also by the Attorney General under the above mentioned instructions of the Governor, instituted suit in the State Court of Ouachita Parish to set aside the sale of November 4, 1898, to recover the unsold lands and the proceeds of the lands sold. The averments of the petition in this case were the same as those of the dismissed action by the State.

The defendants, being all citizens of States other than Louisiana, removed the cause into the United States District Court for the Western District of Louisiana, filed the record there and took a rule on plaintiff to reform its pleadings into a bill in equity in conformity to the rules prescribed by the Supreme Court of the United States. Plaintiff acquiesced in this rule and got an order permitting it to file a supplemental and amended bill. The reformed pleadings and the supplemental and amended bill were filed as one proceeding.

The greater part of this new bill was taken up with correcting and modifying the averments of the original bill, particularly those as to the participation of the Levee Board itself in the alleged fraud, and those as to the value of the property, they being cut in two by the new bill.

This bill was utterly defective and without equity:

FIRST. Because the action being barred on the face of the bill by the limitation of ten years, it contained no averments to take the case out of the operation of the statute, except the bare statement that the Board did not discover the fraud until October 13, 1909, eleven years after it was charged to have been perpetrated.

SECOND. Because it did not offer to do equity by returning the purchase price of the lands with interest, nor the large amounts of taxes levied and collected on the lands, nor the costs and expenses of selling the lands, nor the costs and expenses of preserving and guarding the lands from trespassers.

THIRD. Because it sued to recover the purchase price of the lands sold, and declined to ratify the sales so made.

FOURTH. Because, so far as it sought to annul the sale as a disguised donation (on its face an absurd averment), it was barred by the statute of limitation of ten years.

FIFTH. Because, so far as it sought to set aside the sale for lesion beyond moiety, it was barred by the statute of limitation of four years.

The defendants filed general and special demurrers, setting up the above grounds, and, inasmuch as the bill charged fraud, filed an answer in support of the demurrers, denying every averment in the bill charging fraud and conspiracy, and every averment from which fraud could be inferred, and setting up the true facts. This answer was filed to fortify the demurrers, and was filed in compliance with the practice in the Fifth Circuit, as declared in *Johnson vs. Forsyth Mercantile Company*, 127 Fed. 845, such being the general rule

of equity practice, though specifically required by the equity rules of the United States Supreme Court only in the case of a plea.

These demurrers were set down for argument, were argued and submitted.

On the day fixed for the decision of the case the complainant appeared and asked leave to file a *second* amended bill. The Court, considering that the proffered amendments did not make the bill good, refused the proffered amendments and entered a decree dismissing the bill.

From this decree the Levee Board appealed to the United States Circuit Court of Appeals, taking this appeal only fifteen days before the delay for appeal would expire. That Court reversed the decision and held that the proffered amendments would make the bill a good bill. This decision was in utter disregard of the settled jurisprudence of the Supreme Court of the United States in a long line of decisions stretching from *Sterns vs. Page*, 7 How. 819, through *Wood vs. Carpenter*, 101 U. S. 135; *National Bank vs. Carpenter*, 101 U. S. 567, to *Wodensac vs. Reiher*, 115 U. S. 102; *Hammond vs. Hopkins*, 143 U. S. 274; *Felix vs. Patrick*, 145 U. S. 332; *Foster vs. R. R. Co.*, 146 U. S. 88; *Boone vs. Burlington R. R.*, 139 U. S. 693; *Hardt vs. Heidweyer*, 152 U. S. 559; and the opinion did not even refer to that jurisprudence or the principles laid down by it.

The cause was remanded to the District Court, allowing the defendants twenty days to answer. The defendants obtained from that Court a delay to answer until the rule day in August.

On July 11, 1913, the Board of Commissioners of the Tensas Basin Levee District, by proper resolution, tendered to the defendants a compromise of this litigation upon the condition that the defendants should pay the Board the sum

of $100,000. This proposition was accepted, and on the same day the parties appeared before a notary and executed a formal act of compromise, the $100,000 being paid by a ten-day draft, which draft was paid at maturity and the proceeds deposited in the treasury of the State of Louisiana to the account of the Board of Commissioners of the Tensas Basin Levee District.

By this act of compromise, which both parties declared they preferred to the hope of gaining balanced by the fear of losing in the litigation between them, in the United States District Court, in cause No. 694 of its docket, styled *Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company*, they agreed to forever end and set at rest all the matters and things set up and contained in the original and amended bills of complaint in said cause, and to forever set at rest all questions relating to the validity of the titles of the Tensas Delta Land Company, purchased by the latter in November, 1898. In consideration of the payment the Levee Board agreed to dismiss the litigation at its cost. The compromise further ratified, confirmed and approved a previous compromise made between the parties on July 9, 1903.

On July 19, 1913, the defendants, setting up the compromise and the payment of the price thereof, and that the compromise had the effect of the thing adjudged between the parties, laid a rule on the Levee Board and on R. G. Pleasant, Attorney-General, as the attorney of record of the complainant, to show cause why the cause should not be dismissed, and praying that until this rule could be heard all further proceedings in the cause be stayed.

The Court made this rule returnable on the first day of the next term of the court at Monroe, which took place in October.

On the same day this rule was filed the Secretary of the Levee Board, under the Board's direction, addressed a letter to the Attorney-General, as counsel of record for the Board, requesting him to dismiss this case in accordance with the compromise, a copy of which had been transmitted to him on the 14th.

He evidently declined to obey the instructions of his client. Consequently the Levee Board, through its president, T. V. Gilbert, on August 5th, filed a return to this rule, asking that it be made absolute and the suit dismissed. This action of the president was ratified by a formal resolution of the Board adopted October 9, 1913.

On October 6th, before the return day of this rule arrived, the Attorney-General, as attorney of the complainant, filed his answer to the rule, objecting to the recognition of the compromise and the dismissal of the suit, on the grounds:

> "FIRST. The said suit is based upon a fraudu-
> "lent sale of nearly 900,000 acres of land belonging
> "to the complainant, and the said fraud vitiates the
> "contract of sale.
>
> "SECOND. A fraudulent sale of public lands
> "cannot be ratified and approved by a subsequent
> "agreement between the vendor and the vendee. Only
> "a new legal and honorable sale, for an adequate con-
> "sideration, can operate a transfer of property. The
> "ratification of a fraud is no more legally binding
> "than the perpetration of the original fraud itself,
> "and no governmental agency or subdivision or court
> "can justify the one nor condone the other.
>
> "This results not only from the positive expres-
> "sions of the law, not only because it is *contra bonos*
> "*mores* and against public policy, but also because it
> "is inherently one of the fundamental objects of gov-
> "ernment to prevent and punish fraud, and especially

"fraud against the sovereign. Government and "fraud are basically antagonistic. Either fraud must "be condemned and government upheld, or fraud up- "held and government abandoned.

"The motion to dismiss this suit states that the "differences between the parties thereto have been "settled and compromised by the payment of $100,000 "by defendant to complainant. The only point in "dispute was the question of fraud, all others being "abandoned during the progress of the case, as shown "in the judgment of this Honorable Circuit Court of "Appeals, and by admission of complainant's counsel "in open court."

[This statement is without foundation in fact. Counsel abandoned nothing but the plea of prescription of one year. The plea of prescription of ten years still remains. Complainant will have to prove all its averments to escape the operation of this limitation. Every averment in the bill from which fraud could be averred was denied under oath. In deciding the case the Circuit Court of Appeals said: "In deciding the questions raised by the demurrers, we have assumed, as required by the rule, that the averments of fact in the bill are true. If the cause comes to trial, the defendant will not be prejudiced by what we have said should the evidence show a different state of facts from that alleged."]

"The question compromised, therefore, was that "of fraud, and nothing else, and the Court should not "favor wrong instead of right by dismissing a suit "of which it has full and complete jurisdiction.

"THIRD. Complainant should not be permitted "to use the court and its process for the purpose of "condoning and compromising fraud for money.

"FOURTH. The Attorney General cannot dis- "miss this suit without express authority from the

"Governor of the State of Louisiana, so to do for the "reason that his right to represent complainant "herein and prosecute this suit was conferred upon "him by the Governor under the provisions of Act "No. 3 of the Extra Session of the General Assembly "for the year 1910, and said right has never been "withdrawn; that the Attorney General is not an- "swerable to the complainant for his management of "this suit; nor is he bound to dismiss same at the "request of said complainant; that the effect of said "Act of the Legislature is to place the Governor in "supreme charge of this and similar suits in the "event he chooses to proceed under the Act in any "particular suit; that the Attorney General is di- "rectly responsible to him, and to him alone; that "it was the intention of the Legislature, in passing "the statute above cited, to give to the Governor, and "through him to the Attorney General, the control "of suits of this character, and on account of this "control prevent the compromise of the public's "rights and interests, such as the Board of Commis- "sioners of the Tensas Basin Levee District has at- "tempted to do in the present instance; that the com- "plainant cannot compromise this suit, nor the Court "dismiss it, without the Governor's consent in any "event.

"Wherefore, respondent prays that defendant's "motion to dismiss be denied, that the agreement "upon which it is based be disregarded, that defend- "ant be ordered to file its answer to the complainant "immediately, and that the trial of this case on the "merits be proceeded with without delay.

"Further prays for all necessary orders and gen- "eral and equitable relief.

"R. G. PLEASANT,

"Attorney General State of Louisiana and Attorney "of Record for Complainant."

The Attorney General did not appear on the first day of the October term of the United States District Court to back up his objections. The Judge says in his return that for that reason he deferred the hearing to the next day and caused a telegram to be sent to the Attorney General in order to give him full opportunity to be present and heard upon the motion to dismiss the suit. He still did not appear. The compromise was proven, the payment of the $100,000 into the State treasury was shown, and for reasons given by the Judge the order was entered on October 21, 1913, dismissing the cause as asked for, both by the complainant and the defendant.

Nothing was heard from the Attorney General until April 6, 1914, when the State of Louisiana, appearing by the Attorney General, asked leave to intervene and appeal from the said judgment.

As stated above, the decree had become final by the adjournment of the court for the term, and the delay for appeal had elapsed to within a margin of fifteen days, claiming that she was aggrieved by said judgment.

The Judge below refused both the application to intervene and the application for an appeal.

Thereupon the State made application to the United States Circuit Court of Appeals for the Fifth Circuit for writs of mandamus and *certiorari*. The Court ordered a rule to be taken on the Judge to show cause why the writs should not issue. He made full and detailed returns, giving reasons for his action as follows:

> "FIRST. The State of Louisiana is without legal "interest in the subject-matter of this suit, and has "no authority in its own name or right to carry on "the litigation, and it was so specifically held by the "Supreme Court of Louisiana in the cause entitled

"*State vs. Tensas Delta Land Company, Limited,* re-
"ported in 126 La. 59.

"SECOND. Inasmuch as the State of Louisiana
"was not a party to the suit, it had no appealable in-
"terest or standing in a court of equity to ask for an
"appeal, even admitting, *arguendo,* that it had the
"same time within which to appeal as that possessed
"by a party to the suit.

"THIRD. The petition of the Honorable Attor-
"ney General, asking leave, in the name of the State
"of Louisiana, to intervene in the cause, was one
"which, in my opinion, appealed to my discretion as
"Chancellor, and in the exercise of that discretion
"I deemed it best to deny the petition, and this in
"particular in view of the fact that the State had
"already had its day in court and had been adjudged
"by the highest Court of its own sovereignty to be
"devoid of legal interest in the subject-matter of the
"litigation. The intervention being denied, it fol-
"lowed, in my opinion, as a logical consequence, that
"no right to appeal existed, and appeal was also
"denied.

"FOURTH. Independent of the previous decision
"of the State Court in the case in the 126th Louisi-
"ana, it is my view that the merely general nature
"and character of the interest alleged by the State
"in the subject-matter of the litigation are not such
"as to entitle the State to appeal from the decree of
"dismissal of October 21, 1913, especially in view of
"the fact that such decree is based upon the consent
"of both parties to the record and the good faith of
"the members of the Levee Board in making the
"compromise is not questioned.

"FIFTH. The Honorable Attorney General of
"Louisiana did not show any authority to apply for
"leave to intervene or appeal, other than as arises

"from his office as Attorney General or his position "as solicitor and of counsel for the Levee Board in "the suit pending in said District Court; and, in my "opinion, there existed in him no right or authority "in either capacity to carry on the litigation or appeal "the cause contrary to the wishes and best judgment "of his client, the Board of Levee Commissioners of "the Tensas Basin Levee District, which, for a valu- "able consideration, and upon mature deliberation, "had seen fit voluntarily to compromise the same.

"X.

"For the reasons already stated, I am of opinion "that the petitioner has no paramount and superior "right as a sovereign State to intervene in said suit "No. 694, and that it is not entitled, as a matter of "law or equity, to appeal to this Honorable Court "from said decree of October 21, 1913, ratifying said "compromise, as aforesaid."

After full hearing, the United States Circuit Court of Appeals on October 29, 1914, denied both writs, giving as its reasons the following:

"1. Under the decision of the Supreme Court of the State of Louisiana, reported in *State vs. Tensas Delta Land Co., Ltd.*, 126 La. 59, the Supreme Court of the State, on full consideration, decided that the State was without real or beneficial interest in the lands in controversy, and this decision is controlling in this court.

"2. One who is not a party to a record and judgment is not entitled to an appeal therefrom. (*Bayard vs. Lombard*, 9 How. 530; *Indiana vs. Liverpool & London & Globe Ins. Co.*, 109 U. S. 168; *Ex Parte Cockroft*, 104 U. S. 578; *Ex Parte in the Matter of Leaf Tobacco Board of Trade of the City of New York, Petitioner*, 222 U. S. 578, 581.)"

It is this decision which the State now seeks to overthrow in this court.

In this proceeding in this court, the State has apparently abandoned its application for an appeal from the judgment refusing to permit it to intervene in the case of *Board of Commissioners of the Tensas Basin Levee District vs. The Tensas Delta Land Co., Ltd.*, and has confined its claim to an appeal from said judgment to two grounds:

FIRST. Under the provisions of Article 571 of the Code of Practice of the State of Louisiana.

SECOND. On the ground that it was a *quasi* party to the record.

ARGUMENT ON THE LAW.

I.

Section 571 of the Code of Practice of Louisiana provides:

> "The right of appeal is given not only to those "who were parties to the cause on which a judgment "has been rendered against them, but also to third "persons to such suit, when such third persons allege "that they have been aggrieved by the judgment."

Even though a statute of the State of Louisiana, governing the proceedings in its courts, could govern the procedure on appeal in a Federal Court of Equity, and even though the right of appeal in this cause should be regulated and determined by Section 571 of the Code of Practice of the State of Louisiana, it is the settled jurisprudence of Louisiana that the third person seeking an appeal must not only allege that he had been aggrieved by the judgment, but

he must in fact have an interest in the subject-matter of the litigation which is affected by the judgment sought to be appealed from, and he must prove that interest.

In *Lacroix vs. Menard et als.*, 7 Martin (N. S.), 345, decided in 1829, four years after the Code of Practice went into effect, the Supreme Court of Louisiana said:

> "This Court has already decided that when persons not parties to a judgment appeal from it, they must allege and prove in the court of first instance their right to do so; that is, they were aggrieved by it. The correctness of this mode of carrying the 571st Article of the Code into effect has been strongly contested in argument, but after much reflection we do not see what other course can be adopted. The fact of a party being aggrieved by judgment rendered between others is an indispensable condition to his right of appealing. That right must be established somewhere before the correctness of the judgment complained of can be examined into. It cannot be tried in this court, and it must be in that below, or the statute would become a dead letter."

This decision was confirmed and the opinion quoted with approval in *Fazende vs. Flood*, 24 Ann. 425.

See also:

> *Arrowsmith vs. Rappelge et al.*, 19 Ann. 327; *State ex rel. Belden vs. Markey*, 21 Ann. 743; *Block, Britton & Co. vs. Barton, Miller & Co.*, 27 Ann. 89; *Guilbeau vs. Detiege*, 32 Ann. 911.

In the case above quoted, *State ex rel. Belden vs. Markey*, 21 Ann. 743, it was claimed that the affidavit of the third person appellant of his interest and of his being

aggrieved by the judgment was binding on the Court, but the Court overruled this claim.

City vs. Dufossat, 46 Ann. 398; *Bland vs. Edwards,* 52 Ann. 822; *Board of Liquidation vs. N. O. Waterworks Co.,* 39 Ann. 202.

The Attorney General seems to think that all he has to do is to aver that the State is aggrieved by the judgment, make affidavit to his petition and that the State is then entitled to an appeal of right. As shown below, the State has no interest in this litigation.

II.

It is true that the Courts of the United States have held that where a State statute gives a right, the Federal Courts will give the remedy, but mere methods and rules of procedure provided by State statutes for the courts of the State do not apply to the Federal Courts of Equity, or to appellate procedure in those courts. These rules of State procedure are not the rights covered by the rule.

By the provisions of Section 913 of the Revised Statutes of the United States, which is taken from the Process Act of May 8, 1792, all suits in equity in the Circuit and District Courts in the United States, forms and modes of procedure, shall be according to the principles, rules or usages which belong to Courts of Equity. In *Hurst vs. Hollingsworth,* 100 U. S., page 100, at page 103 this Court said that the requirement of this statute has always been obligatory upon parties and the Court wherever the question has been raised.

This rule is also true as to all proceedings in error in cases at law in the Federal Courts, which cases, by Section

914, Revised Statutes of the United States, are required in practice, pleadings and forms and modes of procedure to the State law.

In *United States vs. Train*, 12 Fed. 852 (C. C.), in an opinion by Justice Gray, it was early held that the taking of a case from one Federal Court to another by writ of error or appeal is regulated exclusively by the Acts of Congress, or, when those are silent, by rules derived from common law, from ancient English statutes, or from the practice of the Courts of the United States.

This rule has been recognized in many later cases.

> *Chateaugay Ore & Iron Company, Petitioner*, 128 U. S. 544, 553-555; *St. Clair vs. United States*, 154 U. S. 134, 153; *Ghost vs. United States* (C. C. A.), 168 Fed. 841, 843; *Logan vs. Goodwin* (C. C. A.), 104 Fed. 490; *Menge vs. Warriner* (C. C. A.), 120 Fed. 816, 817; *Francisco vs. Chicago & A. R. Co.* (C. C. A.), 149 Fed. 354, 358, 359.

In *Chateaugay Ore & Iron Company, Petitioner*, 128 U. S. 544, 553-555, in an opinion by Mr. Justice Blatchford, it is said:

> "We are of opinion that the practice and rules of the State Court do not apply to proceedings in the Circuit Court taken for the purpose of reviewing in this court a judgment of the Circuit Court, and that such rules and practice, embracing the preparation, perfecting, settling, and signing of a bill of exceptions, are not within the 'practice, pleadings, and forms and modes of proceeding' in the Circuit Court, which are required by Section 914 of the Revised Statutes (U. S. Comp. St. 1901, p. 684), to conform 'as near as may be' to the 'practice, pleadings, and

forms and modes of proceeding existing at the time in like causes in the courts of record of the State' within which the Circuit Court is held, 'any rule of court to the contrary notwithstanding.' * * *

"The manner or time of taking proceedings as a foundation for the removal of a cause by a writ of error from one Federal Court to another is a matter to be regulated exclusively by Acts of Congress, or, when they are silent, by methods derived from the common law, from ancient English statutes, or from the rules and practice of the Courts of the United States."

In *St. Clair vs. United States*, 154 U. S. 134, 153, it is said:

"What is necessary to be done in a Circuit Court, even in civil cases, in order that its action upon any particular question or matter may be reviewed or revised in this court, depends upon the Acts of Congress and the rules of practice which this court recognizes as essential in the administration of justice."

Menge vs. Warriner, 120 Fed. 816, 817, is a decision of the Circuit Court of Appeals of the Fifth Circuit, delivered by Circuit Judge Shelby, in which he says that the question of the finality of a judgment or decree for the purposes of review by a writ of error or appeal in the Federal Courts is not affected by the procedure in the State Courts, but must be governed by the rules established by Federal legislation and by the decisions of the Federal Courts.

In *Francisco vs. Chicago & Alton R. R. Co.*, 149 Fed. 354, 358-359, Judge Sanborn, speaking for the Court of Appeals of the Eighth Circuit, says of the Conformity Act that

"Section 914 is limited by its express terms to the practice and proceedings in the Circuit and District

> Courts to procure their judgments. It has no application to the practice or proceedings of the Federal Appellate Courts or to any matters relating to bills of executions, motions for new trials, or any other means adopted to review the judgments of the Circuit or District Courts. The power and practice of the Federal Appellate Courts are derived exclusively from the Constitution, the Acts of Congress, the common law, the ancient English statutes and the rules and practice of the Courts of the United States, and they may not be extended, diminished, controlled or affected by the statutes of the States or the practice of their courts."

III.

The State of Louisiana was no party to the record below either directly or indirectly, neither as an actual party nor as a *quasi* party.

The Attorney General works out his theory of the State being a *quasi* party by asserting that

> "the Levee Board is really a nominal party, since "the lands are lands of the State, confided to the care "of an instrumentality of the State which is subject "to the paramount authority of the State, and the "State is in a legal sense a *quasi* party and entitled "to appeal."

If the State could not be a direct party as complainant to set aside the sale of the lands in question by the Levee Board, as held by the Supreme Court of Louisiana, how could she be a *quasi* party to suit to set aside the sale?

IV.

The State of Louisiana is Without Legal Interest in the Subject-Matter of This Suit, and Has No Authority in Its Own Name or Right to Carry on the Litigation, and Hence No Right to Intervene.

In order to substantiate this it is necessary only to refer to the act creating the Levee Board and the decision of the Supreme Court of Louisiana interpreting the same.

The Tensas Basin Levee District was created by the Legislature of Louisiana, by Act No. 59 of the session of 1886. Section 3 of that act constitutes and creates the Board of Levee Commissioners of the Tensas Basin Levee District to be a body politic, with corporate powers, to sue and be sued in their corporate name, to have a seal and to have the power to do and perform all purposes of the act, etc. The section reads as follows:

> "That the said commissioners shall constitute a 'Board of Levee Commissioners of the Tensas Basin Levee District,' and they shall be and they are hereby constituted and created into a body politic with corporate powers; they shall have power to sue and shall be sued in the corporate name, and shall have a seal, and shall have the power to do and perform all the purposes of this act; the domicile of this corporation shall be at the Town of Rayville, in the Parish of Richland, and it shall be sued there, and service of citation shall, in all cases, be made upon its president, either in person or at his domicile during his absence wherever he may reside, as in the case of ordinary suits."

Act No. 77 of 1888 is amendatory of the act above referred to, and by virtue of this amendatory act the lands

which are the subject of this litigation were conveyed by the State of Louisiana to the Levee Board. This act contains the following provisions:

> "All lands now belonging or that may hereafter belong to the State of Louisiana and embraced within the limits of the Tensas Basin Levee District, as herein constituted, shall be, and the same are hereby given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Tensas Basin Levee District, whether said lands are part of lands originally granted by the Congress of the United States to this State, or whether said lands have been or may hereafter be forfeited to or bought in by or for or sold to the State at tax sales, for nonpayment of taxes," etc.

The act further provides:

> "The Auditor and Register of the State Land Office of the State of Louisiana shall, on behalf of and in the name of the State, convey to said Board of Levee Commissioners, by proper instrument or conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever, from time to time, said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof, etc. And when said conveyances are so recorded, the title to said lands, with possession thereof, shall from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees. * * * **Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge, or otherwise dispose of said lands, in such manner and at such times and for such prices as to said Board shall seem proper."**

Prior to the institution of the suit No. 694 brought by the Levee Board against the Land Company, a suit for the

recovery of the same lands was brought in the State Courts of Louisiana by the State of Louisiana against the Land Company. That case went on appeal to the Supreme Court of Louisiana, and is reported *State vs. Tensas Delta Land Company, Limited*, 126 La. 59. The decision of the Supreme Court of the State construes the act under which the Levee Board was created. It was there specifically held that the Levee Board could sue to recover the lands, but that the State could not. In the opinion of the Court, by Mr. Justice Provosty, it is said (pp. 71-73):

> "Most assuredly and beyond all question, **the Legislature has divested the State absolutely of all beneficial interest in said lands, and transferred same to the said Board of Levee Commissioners.** It is impossible to read the said Act 59 of 1886 hereinabove quoted, and come to any other conclusion.
>
> "The argument that the said Board is nothing more than a mere agency or instrumentality of the State, and that therefore the State may sue in every case where the said Board might sue, contains a manifest *non sequitur*. Every city, town, and parish of the State is a mere agency or instrumentality of the State; but no one would venture to say that the Attorney General could ignore the existence of these corporations and enforce, in the name of the State, any cause of action which any of them might have.
>
> "The legislative control over corporations of the character of this Levee Board is much more complete than over municipal corporations proper and parishes—it made them, and can at any time abolish them, **so long as the obligations of their contracts are not thereby impaired**—but these corporations have their existence and exercise their functions by and under the Constitution and statutes of the State, and so long as these established laws remain in force **it is they which much regulate the property and**

other rights of said corporations and their modes of action, and the disposition of their property, and their rights to sue and to be sued. If one of these corporations has a right of action, **the proper functionary to enforce same is the governing body of the corporation, and not the Attorney General, or the State.** * * *

"We note, in conclusion, that the membership of this Levee Board can be changed at any time by the Governor without his having to assign any reason, and that therefore the Legislature has provided ample remedy for the protection of the people of the district who are the real parties in interest."

In the opinion denying application for rehearing in the same case, the Supreme Court of Louisiana says (p. 74):

"The Legislature vested the absolute title to the lands in controversy in the Board of Commissioners of the Tensas Levee District, with full power to sell the same on such terms as the Board might deem proper. The Legislature also vested in said Board full power to sue and be sued, and to stand in judgment, in all matters relating to their gestion and trust. The Board of Commissioners could have brought the present suit to annul the alleged fraudulent sale and recover the lands. The Governor of the State, with his power of appointing and removing members of Levee Boards, can compel them to bring such suits as he may deem proper in the interests of levee districts.

"The General Assembly has the power at any time to authorize the Attorney General to institute actions for the use and benefit of the taxpayers and people of any particular levee district. **But as the General Assembly has vested the power to sue and be sued in the Board of Commissioners of the Tensas Levee District, and has vested no such co-ordi-**

nate power in the Governor or Attorney General, we are of opinion that the institution of this suit in the name of the State is unauthorized."

The Attorney General claims that the State of Louisiana is affected by the result of this litigation; that indirectly it loses by an adverse decision or by a compromise which he does not approve; and that, therefore, the State has a right to be made a party to the suit and to be heard therein. If that claim is well founded, the State would have a right to interfere with every litigation in which a municipal corporation of the State is a party to the record, and likewise in every litigation the result of which might be said to affect the material prosperity of the State. If such were the case the control of the litigation confided by State statute to the municipal bodies of the State, might be taken from these municipal bodies and placed within the control of the Attorney General at the will of the latter. Such pretension is answered by the language of the Supreme Court of Louisiana in the quotation above made. It is clear, upon reason as well as authority, that the State has no different *status* in litigation than any other body.

In *New Orleans & Carrollton Railroad Co. vs. City of New Orleans*, 34 La. An. 429, 437, the State undertook to intervene upon a question of the right of a railroad to use the streets in New Orleans. The Court said:

> "What the plaintiff is really claiming is the right to operate its railroad through the streets of New Orleans for a period of twenty-five years from 1883; and the question to be determined is whether this valuable right has been conferred upon her by her charter, either expressly or by legal implication. Because, under a particular construction of legislative acts, the State would derive certain pecuniary ad-

> vantages furnishes, in our judgment, no reason why we should depart from those general rules which are universally applied in the exposition of statutes. The State is the fountain of justice, and **when mere rights of property are asserted in her favor, she subjects herself to the dominion of those laws which she has herself established as the proper standard by which similar rights, when claimed by her citizens, are regulated and determined.** Her dignity and justice require that when a question is presented to her courts as to the extent to which she has delegated a part of her sovereign power and conferred upon individuals peculiar privileges not shared by the rest of her children, such question should be determined without consideration of any more pecuniary advantage to the State. We at least shall determine this question precisely as if the reversion of property claimed under the statute had been stipulated in favor of any individual instead of the State."

The same principle is recognized and applied in a recent case in the Supreme Court of the United States, to which reference will later be made upon another point. We refer to *Ex Parte Leaf Tobacco Board of Trade of the City of New York*, 222 U. S. 578, 581. In a *per curiam* opinion denying mandamus to permit petitioner to intervene in a cause in the court below, it is said:

> "The merely general nature and character of the interest which the movers allege they have in the papers here filed is not in any event of such a character as to authorize them in this proceeding to assail the action of the court below. This is more obvious in this case since the act of the court which is assailed has been accepted by those who are parties to the record."

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The Attorney General refers to *Little vs. Williams*, 231 U. S. 335; *Chapman vs. Levee District*, 232 *Id.* 186, 198; and *Rogers Locomotive Mach. Works vs. American Emigrant Co.*, 164 *Id.* 559; but these cases are not at all in point in this discussion.

Little vs. Williams and *Chapman vs. Levee District* arose in Arkansas under the Swamp Land Act passed by Congress in 1850, and compromise was made in 1895 between the State of Arkansas and the United States, under which the State relinquished all rights in the land in question. This compromise was approved by the State Legislature in 1897, and by Congress in 1898. These two cases go merely to the extent of holding this compromise to be binding on the Levee District, a subordinate agency of the State. Clearly it was binding, for the compromise was the result of legislative enactment. It was within the legislative power to create or abolish the levee district, and take from it the title to the lands which it held. If the Legislature could abolish the levee district, clearly it could bind the district by its compromise made by legislative enactment.

But in the instant cause the Legislature of Louisiana did not choose so to act. It invested the Levee Board with full power of control and disposition of the lands, and it results that so long as that power remains unrevoked it is within the authority of the Levee Board to convey good title to the lands or compromise the litigation respecting the same.

The like observations apply to *Rogers Locomotive Mach. Works vs. American Emigrant Co.*, 164 U. S. 559, 576, 577. It is said on page 576:

> "The State made it [the county], and could, in its discretion, unmake it, and administer such property and revenue through other instrumentalities."

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We do not dispute this doctrine. In the suit at bar the State, through its legislative body, made the Levee Board and devolved upon it the duty to administer the property; but the Legislature of Louisiana has never unmade the Levee Board, nor sought to administer the lands through a different instrumentality. Certainly it does not lie within the scope of the duties of the Attorney General to unmake that body which the Legislature has created, nor destroy or take from its powers. It follows, as a logical consequence, that the acts of the Levee Board in the discharge of the duties thus expressly delegated to it by the State Legislature are valid and binding.

V.

The State of Louisiana Is Not a Party to the Record in the Court Below, Nor to the Decree of October 21, 1913, Dismissing the Cause, and Hence Is Not Entitled to Appeal From That Decree.

It is a familiar rule that one who is not a party to a record and judgment is not entitled to appeal therefrom.

Bayard vs. Lombard, 9 How. 530; *Ex Parte Cutting,* 94 U. S. 14; *Ex parte Cockroft,* 104 *Id.* 578; *Guion vs. Liverpool, London and Globe Ins. Co.,* 109 *Id.* 173; *Ex parte Leaf Tobacco Board of Trade,* 222 *Id.* 578, 581; *Cook vs. Lasher,* 73 Fed. 701, 704 (C. C. A.).

In the early case of *Bayard vs. Lombard, supra* (p. 551), it was said by the Supreme Court of the United States:

> "It is a well-settled maxim of the law, that 'no person can bring a writ of error to reverse a judgment who is not a party or privy to the record.'"

The most recent expression upon this subject in the Supreme Court of the United States reaffirms this rule. We refer to *Ex Parte Leaf Tobacco Board of Trade, supra,* where it is said:

> "One who is not a party to a record and judgment is not entitled to appeal therefrom."

But even a party to a suit cannot appeal from a decree therein rendered, if he is not thereby affected. As said by Chief Justice Waite in *Farmers' Loan and Trust Co. vs. Waterman,* 106 U. S. 265, 269:

> "Only parties to a decree can appeal. If a party to the suit is in no manner affected by what is decreed, he cannot be said to be a party to the decree."

It results, therefore, that the State of Louisiana, being neither a party to the suit nor a party to the decree, cannot appeal from the decree dismissing the bill unless the mere fact that the application made April 6, 1914, by the Attorney General, for leave to intervene in behalf of the State, gives such right of appeal. It is plain that it does not. Indeed from what has already been said, it is clear that the State has no right to intervene or carry on the litigation.

VI.

No Appeal Lies From the Order Denying Leave to Intervene, and, Inasmuch as the Leave Was Denied and the State of Louisiana Never Became Party to the Cause, It Follows That No Appeal Lies From the Order Dismissing the Suit.

This case is to be disposed of upon well-settled principles. Not only was the State of Louisiana not a party to

the suit, but it did not apply to become such until nearly six months after the cause was dismissed out of the District Court, pursuant to the act of compromise. The application made by the Attorney General, in the name of the State, for leave to intervene, made on April 6, 1914, was addressed to the sound discretion of the District Court, and was denied by that court. No appeal lies from the order denying leave to intervene; and, inasmuch as the leave to intervene was denied, and the State of Louisiana never in fact became a party to the cause, it results, upon principles to which we have already adverted, that no appeal lies, at its instance, from the order made on October 21, 1913, dismissing the suit out of the District Court. The ruling of Judge Boarman upon this head is pointedly sustained by decisions of this Court and other Federal Courts.

Connor vs. Peugh's Lessee, 18 How. 394, 395; *Ex Parte Cutting*, 94 U. S. 14, 19-22; *Guion vs. Liverpool, London & Globe Insurance Co.*, 109 *Id.* 173; *Credits Commutation Co. vs. United States*, 177 *Id.* 311; *Ex Parte Leaf Tobacco Board of Trade*, 222 U. S. 578; *Blaffer vs. New Orleans Water Supply Co.* (C. C. A., 5th Circuit), 160 Fed. 389; *Fink vs. Bay Shore Terminal Co.* (C. C. A., 4th Circuit), 144 *Id.* 837, 838; *Land Title & Trust Co. vs. Asphalt Co. of America* (C. C. A., 3rd Circuit), 127 Fed. 1, 21, 22; *Credits Commutation Co. vs. United States* (C. C. A., 8th Circuit), 91 Fed. 570, 572-574; *In re Columbia Real Estate Co.* (C. C. A., 7th Circuit), 112 *Id.* 643; *Thomasson vs. Guaranty Trust Co.* (C. C. A., 7th Circuit), 159 Fed.

126; *Jones & Laughlin, Ltd., vs. Sands* (C. C. A., 2nd Circuit), 79 *Id.* 913; *Lewis vs. Baltimore & L. R. Co.* (C. C. A., 4th Circuit), 62 *Id.* 218; *Hamlin vs. Toledo, etc., Co.* (C. C. A., 6th Circuit), 78 *Id.* 664, 665.

The Act of Congress of March 3, 1891, Chapter 517 (U. S. Comp. Stat. 1901, p. 549), provides:

> "The Circuit Courts of Appeal established by this act shall exercise appellate jurisdiction to review, by appeal or by writ of error, **final decision** in the District Court and the existing Circuit Courts, in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law."

It is clear that the denial by Judge Boarman of the petition of the State of Louisiana, through its Attorney General, for leave to intervene, is not a final decision within the meaning of the Circuit Court of Appeals Act; and the authorities above cited control the disposition of the instant cause and render necessary the denial of the writ of mandamus now sought.

Connor vs. Peugh's Lessee, 18 How. 394, 395, was an action of ejectment brought in the Circuit Court. The tenant did not appear and have herself made defendant in place of the casual ejector, according to the exigency of the notice served; and at the October term, 1854, a judgment was entered against the casual ejector in the usual form. On June 5, 1855, the tenant in possession came into court for the first time and moved to set aside the judgment and execution issued thereon and to be allowed to defend the suit for reasons set forth in her affidavit. The Court refused to

grant the motion, whereupon the tenant in possession prayed an appeal. Mr. Justice Grier said:

> "The tenant in possession having neglected to appear and have herself made defendant and confess lease, entry and ouster, the judgment was properly entered against the casual ejector. No one but a party to a suit can bring a writ of error. The tenant having neglected to have herself made such cannot have a writ of error to the judgment against the casual ejector.
>
> **"The motion afterwards made** to have the judgment set aside and **for leave to intervene was an application to the sound discretion of the Court. To the action of the Court on such a motion no appeal lies,** nor is it the subject of a bill of exceptions or writ of error."

Ex Parte Cutting, 94 U. S. 14, 19-22, like the instant cause, was a petition for a writ of *mandamus* to the Circuit Court of the United States to compel that Court to allow an appeal from its decree. The opinion is by Chief Justice Waite, who says:

> "To entitle the petitioners to the writ asked for in this case, they must show that they have a clear right to an appeal which has been refused by the Circuit Court. The office of a *mandamus* is to compel the performance of a plain and positive duty. It is issued upon the application of one who has **a clear right to demand such a performance and who has no other adequate remedy.** It is never granted in anticipation of an omission of duty, but only after actual default.
>
> "This application is for a writ commanding the Judges of the Circuit Court, or one of them, to allow the petitioners an appeal from the decrees in the cause, and a *supersedeas*. This is the only specific re-

lief asked; and, in support of the application, it is insisted that Marie, Otis, Cutting, Jr., Cutting and Fearing were admitted as parties to the suit March 25th, when they filed their petition therefor, and that consequently they were in a position to demand an appeal as parties. * * *

"The persons presenting the petition of March 25th never did in fact become parties, and it is apparent from the record that their present claim in that regard is an afterthought. They filed their petition to be made defendants in the suit, but it was never granted. * * *

"From this it is apparent that **if one wishes to intervene and become a party to a suit in which he is interested, he must not only petition the Court to that effect, but his petition must be granted;** and while it is not necesary for him to show that he has actually been admitted by an express order entered upon the record, he must at least make it appear that he has acted or has been treated as a party. That, as we have seen, is not the case here. * * *

"Upon this state of facts it is impossible to say that the petitioners, or any of them, have established their right to appeal as actual parties to the suit before the decree.

"No appeal lies from the order of October 3rd, refusing them leave to intervene and become parties; for that was only a motion in the cause, and not an independent suit in equity appealable here.

"Neither can these petitioners appeal as stockholders. **Only parties, or those who represent them, can appeal.** The stockholders do not represent the corporation, but for some purposes the corporation represents them. They are sometimes admitted as parties to a suit, for the purpose of protecting their own interest in the corporation against unfounded and illegal claims against it, but this 'remedy is an

> extreme one, and should be admitted by the Court with hesitation and caution.' (*Bronson vs. LaCrosse Railroad Co.*, 2 Wall. 302.) It is always addressed to the sound judicial discretion of the Court. That we cannot control by *mandamus*."

Guion vs. Liverpool, London & Globe Insurance Co., 109 U. S. 173. Guion, claiming to have an interest in certain railway bonds which were the subject of foreclosure, filed his petition in the foreclosure suit, asking to be admitted as a party to the suit for his own protection. This petition was denied and Guion was allowed an appeal on giving bond. The appeal was dismissed for want of jurisdiction. Chief Justice Waite, in the opinion of the Court, said:

> "The petition of Guion was for leave to appeal from a decree in a suit to which he was not a party. We decided in *Ex Parte Cutting*, 94 U. S. 14, that such an appeal could not be taken. He had applied for leave to become a party, but this leave was not given. So he is not a party to the decree from which he appealed."

The most recent expression of opinion by the Supreme Court of the United States upon this head is found in *Ex Parte Leaf Tobacco Board of Trade*, 222 U. S. 578. This was an application for leave to file a petition for mandamus, prohibition and writ of *certiorari*, in order to review the decree of the lower Court carrying into effect the decree of the Supreme Court of the United States in the suit *United States of America vs. American Tobacco Company*. The leave to file the petition was denied and the following reasons were assigned in the *per curiam opinion* (p. 581):

> "1. One who is not a party to a record and judgment is not entitled to appeal therefrom. (*Bay-*

ard vs. Lombard, 9 How. 530; *Indiana vs. Liverpool, London & Globe Ins. Co.*, 109 U. S. 168; *Ex Parte Cockroft*, 104 U. S. 578.)

"2. The action of the Court below in refusing to permit the movers to become parties to the record is not susceptible of being reviewed by this Court on appeal, or indirectly, under the circumstances here disclosed, by the writ of mandamus. (*In re Cutting*, 94 U. S. 15, and see *Credits Commutation Co. vs. United States*, 177 U. S. 311.)

"3. The merely general nature and character of the interest which the movers allege they have in the papers here filed is not in any event of such a character as to authorize them in this proceeding to assail the action of the Court below. This is more obvious in this case since the act of the Court which is assailed has been accepted by those who are parties to the record. (*United States vs. Union Pacific R. R. Co.*, 105 U. S. 262; *Elwell vs. Fosdick*, 134 U. S. 500.)"

The declared views of the Circuit Court of Appeals of the Fifth Circuit on this subject are in precise harmony with the decisions of the Supreme Court of the United States above cited. *Blaffer vs. New Orleans Water Supply Co.*, 160 Fed. 389, is a decision of that Court. It holds that order refusing to allow one to intervene is not an appealable order, being an exercise of discretion and not final in character; that he is left free to assert his rights in any other tribunal of competent jurisdiction, the order not being, in any sense, a determination of the merits of his claim. On page 391 it is said:

"The second ground of the motion to dismiss the appeal is based upon the fact that the intervenor failed to obtain an order permitting him to intervene

and thereby making himself a party to the suit, from which it follows that he is not in an attitude to appeal from the decree entered in the cause or from the refusal of the Court to permit him to intervene. **The action of the Court in declining to make an order allowing appellant to intervene was an exercise of purely discretionary power and was not final** in its character. Appellant failing to obtain the right to intervene was left free to assert such other rights as he might possess in any other tribunal of competent jurisdiction. The order of the Court was equivalent to a denial of the application of the appellant for leave to intervene, and should not be regarded in any sense as a determination of the merits of his claim. (*Credits Commutation Co. vs. United States*, 177 U. S. 311.) * * * In this case it affirmatively appears from the statement of the trial Judge that he declined to make any order upon intervenor's petition. That an appeal does not lie from the order of the Court below denying the motion in a pending suit to permit a person to intervene and become a party thereto is supported by the following authorities (citing many cases.)"

They there assume to quote from the decision of three Judges of the Eighth Circuit, in *United States vs. Northern Securities Co.*, 128 Fed. 808, as follows:

> "Nor will intervention lie after decree, unless to protect an interest which cannot otherwise be protected."

But counsel do not correctly quote either the paragraph or sentence as written by Circuit Judge Thayer in that case. What he said was this (p. 810):

> "**Applications for leave to intervene in a case after the entry of a final decree are very unusual.** They are never granted as a matter of course, and,

> **owing to the tendency of such applications to occasion delay and prolong the existing litigation, they ought not to be granted unless it is necessary to do so to preserve some right which cannot otherwise be protected,** or to avoid some complication that is liable to arise."

The rule of law thus declared is fatal to the intervention and appeal now sought. It is not necessary that this intervention be granted in order to preserve the rights of the State of Louisiana in the lands in question, if any such rights there be. The District Judge so returns. In paragraph 16 of his return he says:

> "I deny that petitioner's interests in the subject-matter of the aforesaid suit cannot be protected except by and through an appeal from the final decree ratifying said compromise and dismissing said suit. In my view the petitioner has no interest in the subject-matter of said suit, but if it had any, an independent suit would, without doubt, lie for the protection thereof."

This is not like the case of a fund in court of which division is about to be made, where all rights of the party applying for leave to intervene will be lost unless intervention be granted. In the suit at bar the lands are still existent; they stand of record in the name of the Land Company; and if the State of Louisiana has any rights therein, an independent suit lies in the name of the State to enforce those rights. The distinction upon which we rely is made clear in *Credits Commutation Co. vs. United States,* 177 U. S. 311. That case brought under review the action of the Circuit Court of Appeals of the Eighth Circuit in denying the petitions for leave to intervene in three certain litigations affecting the

Union Pacific Railway Company. One of the suits was for the appointment of receivers, the enforcement of certain liens and the administration of the properties. Another suit was a bill of complaint of the trustees of the first mortgage of the railway to foreclose that mortgage. The third suit was a bill by the United States to foreclose the subsidy lien of the United States upon the property of the Union Pacific Railway. The Credits Commutation Company and the Combination Bridge Company asked leave to intervene, and an order was made in the Circuit Court denying the prayers for leave to intervene. Appeal was taken to the Circuit Court of Appeals, and in that court motions were made by the appellees and granted to dismiss the appeal, and thereupon an appeal to the Supreme Court of the United States was allowed. In that court a motion was made to dismiss or affirm. In the opinion of Mr. Justice Shiras it is said (pp. 314-317):

> "To show that the Circuit Court, in denying the petition for leave to intervene, was not exercising the usual discretion of a chancellor in passing upon a petition of an outside party for leave to intervene, but adjudicated the petitioners' rights asserted in the petitions, as if upon demurrer thereto, we are pointed to the language used: 'Ordered, that the prayers of the petitioners for leave to intervene herein be, and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene.'
>
> "It is urged that the Circuit Court declined to treat the subject as of one of discretion, and elected to determine the legal rights of the petitioners, so as to preclude them from resorting thereafter to some other tribunal, and that, therefore, its judgment was a final one and properly reviewable on appeal.

"We cannot accept this view of the meaning and effect of the order in question. **What was sought in the petitions was leave to intervene in a pending and undetermined cause, and that right alone was determined. The very terms used by the Court, that the facts stated were 'not sufficient to show that the petitioners, or either of them, have a legal right to intervene,' shows that what was considered was the right to intervene. That right refused, the petitioners were left free to assert such other rights as they might possess as in any other tribunal.** * * *

"The question was well considered by the Circuit Court of Appeals, and we quote and adopt its statement, as follows:

" 'When such an action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such an order not only lacks the finality which is necessary to support an appeal, but it is usually said of it that it cannot be reviewed, because it merely involves an exercise of the discretionary powers of the trial Court. * * * It is doubtless true that cases may arise where the denial of a third party to intervene therein would be a practical denial of certain relief to which the intervenor is fairly entitled, and which he can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an

appeal, since it finally disposes of the intervenor's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation, could, we think, with more propriety and with less difficulty, have been litigated by an independent bill after they had completed, or were about completing, their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petitions were speculative questions, which the lower Court, as we think, very properly, refused to consider or determine.' * * *

"As its action [the action of the Circuit Court] **in denying the petitions to intervene, was an exercise of purely discretionary power, and not final in its character** as respects such alleged right to connect, **we think the Circuit Court of Appeals was right in holding that the appeals could not be entertained by that Court,** and its dceree, dismissing the same, is accordingly affirmed."

The above case, as reported in the Circuit Court of Appeals of the Eighth Circuit, is *Credits Commutation Co. vs. United States,* 91 Fed. 570, 572-574.

In addition to the language quoted by the Supreme Court of the United States, it is said by the Circuit Court of Appeals:

"The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to

this Court, and upon the further proposition that the action of the lower Court in refusing leave to intervene is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. **The order denying leave to intervene was not 'final,' within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioners' alleged right** to form a junction with the main line of the Union Pacific Railroad, which was the substantial right asserted, **but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt.** The trial Court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint, for the reason that it refused to give the petitioners a standing in court to be heard with respect to such question, and also refused to permit the intervening complaint to be filed and become a part of the record. None of the issues, therefore, which were tendered by the petitioners in their intervening complaint, ever passed under judicial review in such a manner as to estop the petitioners from tendering like issues on any future occasion, because the trial Court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. * * *

"It was suggested in argument that, as the lower Court saw fit to insert a clause in its order that it had not refused leave to intervene 'as a matter of discretion,' but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial Court, by inserting such a clause in its order explanatory thereof, could not give an

> effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order was made. The intervening petition merely invoked the discretionary power of the Court, and it could exercise no other power in the premises, whatever the purpose of the Court or its own declaration on the subject may have been. The fact is that the lower Court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled, since the decision in *McLish vs. Roff*, 141 U. S. 661, that an appeal will only lie to this Court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers—except in some cases for which special provision is made by the seventh section of the act under which this Court was created (26 Stat. 826, c. 517)—it follows that the appeals cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered."

If it be said that an independent suit will not lie, we say in reply that this is only because the State of Louisiana has no legal interest in the subject-matter in controversy. If the State has no legal interest in the subject-matter of this litigation, that is an objection which applies with equal force to its petition for leave to intervene. This is pointedly held in *Ex Parte Leaf Tobacco Board of Trade*, 222 U. S. 578, 581, to which we have called attention in Division IV of this brief.

It is said by petitioner that the proper practice is for the District Court to grant an appeal in every case, leaving the question of the appealability of the order for the de-

cision of the Court of Review. (See petition for mandamus, p. 20.) But it seems clear, upon reason as well as authority, that where no appeal lies the District Judge may refuse to allow it.

In re Durrant (C. C.), 84 Fed. 317; *Southern Building & Loan Association vs. Carey* (C. C.), 117 Fed. 325, 327.

It is idle to grant an appeal where, consistently with the recognized rules of law, the appellate court can do nothing but dismiss the appeal when perfected. And so it appears to have been an ordinary practice for the lower Court to deny an appeal if in the opinion of that Court the applicant is not entitled thereto, leaving him to apply for a review of the decision through the medium of petition for the writ of *mandamus*. This practice was pursued in the leading case, *Ex Parte Cutting*, 94 U. S. 14, 19-22, to which reference is above made, and in *Fink vs. Bay Shore Terminal Co.* (C. C. A., 4th Circuit), 144 Fed. 837, 838.

VII.

The Levee Board Acted in Unquestioned Good Faith in Entering Into the Compromise of July 11, 1913; and, Inasmuch as the Public Interests in These Lands Were Confided by Law to That Body, It Is Clearly Within the Discretion of the Trial Court to Deny to All Others the Right To Intervene and Appeal.

The petition for leave to intervene and appeal proceeds, apparently, upon the ground that the Levee Board has failed in its duty in that it has seen fit to compromise the litigation, whereas in the opinion of the Honorable Attorney

General the same ought to have been prosecuted to final conclusion. But the good faith of the Levee Board in entering into the compromise of July 11, 1913, is not questioned. This is shown affirmatively in the return of the District Judge, as well as by the entire absence from the record of any claim which reflects upon the honesty or good faith of the Levee Board. Neither in the objections of the Attorney General to the dismissal of the suit, nor in the petition for leave to intervene and appeal, nor elsewhere in the record, is it claimed that the Levee Board acted otherwise than in the most perfect goood faith and in the exercise of the best judgment of its members in entering into the act of compromise.

In paragraph 19 of the return of the District Judge it is said:

> "In the exercise of its best judgment, and with much apparent deliberation, the Levee Board has seen fit to compromise the existing suit, and in my opinion it had full power and authority so to do. That the Levee Board in entering into the compromise acted in the utmost good faith, and as it deemed for the interest of the taxpayers and inhabitants of the Levee District, was not questioned in any showing made by the Honorable Attorney General before me."

In paragraph 26 of the return the District Judge says:

> "It does not appear from anything shown in the court below that the compromise was in any respect against the best interests of the Levee District, nor that the Levee Board was wrong in its conclusion that the act of compromise, carrying with it the payment of $100,000, was fitly to be preferred to the hope of gaining, balanced by the fear of losing, in said litigation. From the act of compromise it appears that on a former occasion—*viz.*, on or about

> the 9th day of July, 1903—an act of compromise with reference to the lands mentioned in the bill of complaint had been entered into by said Levee Board, acting through its president, W. H. Holloman, under authority of resolution of said board, dated the 9th day of July, 1903, with the Tensas Delta Land Company, Limited, and such former act of compromise was, by the act of compromise of date July 11, 1913, ratified and confirmed. Under all the facts appearing in the record it might well be deemed by the members of said Levee Board to be a prudent act, in the interest of their constituents, to enter into the compromise aforesaid, and thereby acquire for the Levee District the benefits thereof, and it has at no time been claimed before me by the Honorable Attorney General, or by anybody else, that said members of the Levee Board acted otherwise than in the utmost good faith in the compromise so made by them."

Under these circumstances, it was clearly within the discretion of the trial Judge to deny to the State of Louisiana leave to intervene and appeal, especially when application for such leave was not made until nearly six months after the final decree of dismissal.

> *Land Title & Trust Co. vs. Asphalt Co. of America* (C. C. A.), 127 Fed. 1, 21, 22; *Fink vs. Bay Shore Terminal Co.* (C. C. A.), 144 Fed. 837, 838; *Thomasson vs. Guaranty Real Estate Co.* (C. C. A.), 159 Fed. 126.

In *Land Title & Trust Co. vs. Asphalt Co. of America*, 127 Fed. 1, 21, 22 (C. C. A., 3rd Circuit), it is said by Circuit Judge Gray:

> "The application to intervene, in both the first and third appeals, was broadly upon the ground that the party by whom the interests of the intervenor should be represented [in the one case the Land Title

and Trust Company, trustee, and in the other the receivers], was not representing such interests properly. No individual or separate interest of the petitioner, which could not otherwise be adjusted at all, and would therefore be lost if intervention were denied, was presented in the court below in either of the petitions which are the subjects of the first and third appeals. **If the trustee and the receivers act honestly and in good faith, the rights of the appellant are protected.** The trustee has important interests committed to him by his *cestuis que trustent* in the litigation before the Court, and the Court was right, both as to the trustee and the receivers, in exercising its discretion to protect them from interference, in the carrying on of the litigation and the administration of the funds in hand, as attempted by appellant's petitions for intervention. **If the trustee had acted in bad faith, or fraudulently, it was open to the appellant to proceed by original bill,** and if the receivers have been guilty of malfeasance in office, the proper remedy is an application to the Court below by the appellant or other party in interest, for their removal and the substitution of others."

In *Fink vs. Bay Shore Terminal Co.* (C. C. A., 4th Circuit), 144 Fed. 837, 838, application was made by *mandamus* to compel the Court below to permit a bondholder to intervene and appeal. In the opinion of Circuit Judge Goff it is said:

"No special cause was assigned by him, as a reason why such permission should be granted, save only that his rights were not fully protected by the decree of which he complained. No fraud is charged against the trustee, no collusion between the trustee and other bondholders, or other parties, is alleged, and no cause is shown by petitioner from which the Court could find that the refusal of the trustee to appeal from said decree was not entirely proper and

justified by the interests represented by it. Under these circumstances the Circuit Court, exercising its judicial discretion, refused the request of petitioner, and declined to permit him to become a party to said cause.

"It was not the positive duty of the Court below to permit the petitioner to become a party to said cause. That Court has not declined to discharge any duty imposed upon it, so far as the petitioner is concerned, but it has held that **as he is already represented in said litigation by the party duly selected for that purpose—the trustee in the mortgage, it would not be proper under the rules of procedure applicable to such matters, to permit him individually to intervene, and antagonize the trustee** in the discharge of his common duty to all the bondholders. No appeal lies from such discretionary action of the court below. To hold otherwise would create inextricable confusion in judicial proceedings, and render it almost impossible to terminate litigation of the character involved in this cause. Petitioner not having been made a party, was not entitled to an appeal from the decree complained of, and, not being so entitled, the writ of mandamus must not issue compelling the Court below to grant him an appeal."

In *Elwell vs. Fosdick,* 134 U. S. 500, a holder of $14,000 out of $955,000 of railroad bonds, secured by mortgage, was permitted by the Circuit Court to appeal to the Supreme Court in the name of the trustee in the mortgage, from a decree which it was claimed affected the interest of such holder. It appearing that some time before the appeal was taken the trustee had executed a release of his right to appeal and of errors in the decree, and that the Court had in the decree found that there was no proof showing that the trustee had not acted in good faith, it was held that the release bound all the bondholders represented by the trustee;

that the appeal was the appeal of the trustee; and that, on motion of the appellee, it must be dismissed.

In the petition for *mandamus* (p. 24) counsel quote an excerpt from the opinion of the Supreme Court of Louisiana in *State vs. Tensas Delta Land Company, Limited*, 126 La. 59, 72, as follows:

> "If the governing body of one of these corporations fails in its duty to bring a suit which clearly it ought to bring, the Courts may—only, however, under highly exceptional circumstances—allow any citizen or taxpayer of a district to bring the suit; and in such a case the same privilege might for the same reason be extended to the State. But nothing of that kind is pretended in this case. There is no suggestion that the Board of Commissioners of the District has failed to bring suit, or is unwilling to do so. In fact, this Court knows the contrary from the public prints."

The passage thus quoted, it is evident, has reference to a case where the Levee Board, acting fraudulently and collusively, omits to bring suit to redress a wrong sustained by it. So considered, it is in precise harmony with the decisions of the Federal Courts, to which attention is above called. In such case—or as the State Supreme Court expresses it, **"only, however, under highly exceptional circumstances"** —a citizen or taxpayer may bring suit; and it is suggested that perhaps the State may do so. But clearly the suit at bar does not present such a case. The Levee Board has not fraudulently or collusively refused or omitted to act. It has in fact acted. In the exercise of its best judgment and with the utmost deliberation and good faith, the Levee Board compromised the pending suit.

Land Title & Trust Co. vs. Asphalt Company of America, supra, and the other cases herein cited, are authority to the following effect:

FIRST. If the Levee Board acted honestly and in good faith in entering into the act of compromise, the public is fully protected, and no right of intervention in others exists.

SECOND. If the Levee Board acted in bad faith or fraudulently in entering into the act of compromise, it is open to one who is injured thereby to proceed by original bill, and hence he is not entitled to insist upon the right to intervene.

Board of Liquidation of the City Debt of New Orleans vs. Louisville & Nashville Railway Co., 109 U. S. 221, is also a case to the point that the compromise between the Levee Board and the Land Company will not be disregarded in this court. There a question arose on the presentation of an order by the authorities of the City of New Orleans to dismiss a suit in the Supreme Court of the United States, in which the city was plaintiff in error. The order was based on a compromise between those authorities and the railroad company, which the Board of Liquidation, intervening in the Supreme Court, alleged to be **without authority and fraudulent,** the Board of Liquidation itself claiming the land in controversy and that the city had no power, by its compromise, to dispose of the same. The Supreme Court did not disregard the compromise or the order of the city to dismiss the case, but thought the dispute as to the authority of the Mayor and Council presented questions too important to be settled summarily on motion, and ordered the motion to be continued to a subsequent term of the Supreme Court, when the appeal would be dismissed, in accordance with the stipulation, unless the Board should begin and prosecute without unnecessary delay in some court of competent jurisdiction an appropriate suit to set aside the compromise. Such independent suit was thereupon begun, and when the

same was decided in favor of the action of the Mayor and Council, the suit was dismissed in the Supreme Court on the basis of the compromise order.

The above case points out the only course which it is within the province of the State of Louisiana to pursue—if, indeed, it is entitled to pursue any legal remedy whatsoever—because of the alleged grievances set forth in the petition. This Court assuredly will not, upon motion or application for writ of mandamus to review the denial of motion in the court below, disregard the act of compromise. If the State of Louisiana desires to attack the compromise in an effort to set aside the same, such attack can be sustained, if at all, only in case it charges and proves that the act of compromise was fraudulently and collusively made between the Levee Board and the Land Company, and that serious injury has thereby resulted to the State. It is possible that a taxpayer of the Levee District might be able to maintain a suit upon such theory; but as the good faith of the Levee Board stands out in bold relief upon this record, there is no room for the application of this theory in the instant cause.

VIII.

The Circumstances That During the Pendency of the Suit Brought by the Levee Board, the Attorney General Was Solicitor or Counsel of Record For That Body, Does Not Give Him the Right to Appeal the Cause or Carry On the Litigation Contrary to the Will of His Client, the Levee Board.

When the motion was made by the Land Company in the court below to dismiss the cause, the Attorney General

made written objection thereto. These were not presented in behalf of the State, but were the objections of "R. G. Pleasant, Attorney General, State of Louisiana, and Attorney of Record for complainant."

Subsequently, when application was made for leave to intervene and appeal, it was made by the Attorney General in the name and ostensibly in behalf of the State of Louisiana. No authority, however, to make such application is shown, save such as may be inferred from the fact that Mr. Pleasant fills the office of Attorney General or appeared as solicitor or counsel for the Levee Board in its suit.

Whether the objections to the settlement of the suit be treated as objections of the State of Louisiana or the objections of the solicitor or counsel for the Levee Board, they are equally futile. By the act of compromise the suit was settled. There is no subsisting cause of action in favor of the Levee Board against the Land Company. Hence, it is not within the power of the Attorney General to carry on the litigation, and no right of appeal exists.

San Mateo County vs. Southern Pacific Railway Co., 116 U. S. 138, was a suit by the county against the railroad company to recover taxes. Judgment was rendered upon demurrer in favor of the defendant, and the suit dismissed. Thereupon a writ of error was sued out to review the case in the Supreme Court. After the suit was docketed in the Supreme Court, the railroad company paid into the treasury of the county the entire sum claimed by the county to be due. Notwithstanding the settlement between the parties, the attorneys of record for the county proceeded to carry on the suit. This was for the apparent reason that the suit was a test case upon the decision of which other causes depended. The Court entertained a motion to dismiss the writ of error made by counsel specially appointed by the Board of Super-

visors of the county for that purpose. Upon the suggestion that counsel of record desired to oppose the motion, an order was made that notice be given to them to appear and show cause against it if they desired to do so. But the motion being heard, the writ of error was dismissed in the Supreme Court. The ground of dismissal is said by the Supreme Court to be:

> **"For the reason that there is no longer an existing cause of action in favor of the county against the railroad company."**

There is no longer a dispute between the parties to the suit in the District Court. By the act of compromise of July 11, 1913, that dispute has been ended, and the conveyances made November 9, 1898, by the Levee Board to the Land Company have been ratified and confirmed.

If *mandamus* should be granted and the cause heard in this court on appeal from the decree made by Judge Boarman dismissing the suit, it would be impossible for this Court on the record thus made up to grant any relief against the express act of the Levee Board ratifying the sale and consenting to the dismissal of the suit. No relief could be granted against the act of the Levee Board in ratifying the sale and consenting to the dismissal of the cause unless fraud in the compromise were shown, and, as we have seen, there is not even a pretense that the Levee Board, in making that compromise, acted in bad faith.

Upon the record as it now stands the case as presented by the Honorable Attorney General to this Court is a moot case, involving no real issue or controversy between the parties litigant. The rule in such case is that no appeal will

be allowed, or, if appeal be taken, it will be dismissed in the appellate court.

Little vs. Bowers, 134 U. S. 547; *California vs. San Pablo, etc., Railroad Co.,* 149 *Id.* 308; *Mills vs. Green,* 159 *Id.* 651, 653, 657, 658; *New Orleans Flour Inspector vs. Glover,* 160 *Id.* 170; *Kimball vs. Kimball,* 174 *Id.* 158, 161; *American Book Co. vs. Kansas,* 193 *Id.* 49; *Jones vs. Montague,* 194 *Id.* 147; *Fisher vs. Baker,* 203 *Id.* 174; *Lewis vs. Wyman* (C. C.), 168 Fed. 756, 758, 759.

In *Little vs. Bowers,* 134 U. S. 547, 557, it is said:

> "It is well settled that when there is no actual controversy involving real and substantial rights **between the parties to the record,** the case will be dismissed."

In *California vs. San Pablo, etc., Railroad Co.,* 149 U. S. 308, while a writ of error was pending to reverse a judgment for the defendant in an action by the State to recover sums of money for taxes, the defendant offered to the plaintiff and deposited in a bank to its credit the amount of those sums with penalties, interest and costs. This by the statute of the State had the same effect as actual payments and receipt of the money. This fact as to the tender and deposit was admitted by the Attorney General in his brief. Mr. Justice Gray, in the opinion of the Court, said (pp. 313, 314):

> "Upon the fact most properly and frankly admitted in open court by the Attorney General of the State of California, there can be no doubt that this writ of error must be dismissed because the cause of

action has ceased to exist. Any obligation of the defendant to pay to the State the sums sued for in this case, together with interest, penalties and costs, has been extinguished by the offer to pay all these sums and the deposit of the money in a bank which, by a statute of the State, have the same effect as actual payment and receipt of the money. And the State has obtained everything that it could recover in this case by a judgment in this court in its favor. The duty of this Court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it. When in determining such rights it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the Court is now empowered to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the Court or in any other case, can enlarge the power or affect the duty of the Court in this regard."

In the later cases in the Supreme Court of the United States to which we have referred above, there is quoted with approval the rule as declared by Mr. Justice Gray in *Mills vs. Green*, 159 U. S. 651, 653:

> "The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal

> from the judgment of a lower Court, and without any fault of the defendant, an event occurs which renders it impossible for this Court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the Court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact when not appearing on the record, may be proved by extrinsic evidence."

Reliance is had by the Attorney General in his petition upon Act No. 3 of the Extra Session of the Legislature for the year 1910. This act makes it the duty of the Attorney General of the State of Louisiana, upon request of the Governor, to represent any political agency or subdivision of the State in any suit in any court, involving title to any land or real property belonging to any such political agency. The act reads as follows:

> "That it is hereby made the duty of the Attorney General of the State, upon the request of the Governor to represent the State or any political agency or subdivision thereof, in any suit in any court involving title to any land or real property belonging to the State of Louisiana or any of its political agencies or subdivisions, whether the title to said land or real property is vested in or appears in the name of any of its political agencies or subdivisions."

The above act, it will be noted, merely gives the Attorney General, upon request of the Governor, power to act as counsel for the State, or any subdivision of the State, in land litigations. Whatever power the Attorney General has, he derives from some statute of the State.

Railroad Tax Cases (C. C.), 136 Fed. 233.

As was said in *State of Louisiana vs. Graham*, 25 La. Ann. 434:

> "The Attorney General is not the State, but only the counsel for the State. His agreement to acquiesce in a judgment is not the acquiescence of the State; nor does it bind a succeeding Attorney General not to take an appeal where he believes it to the interest of the State to do so and the time for appealing has not elapsed."

This proposed intervention is in form the intervention of the State of Louisiana. In reality it is the intervention of the Attorney General, for that officer assumes to take this action upon his own motion, and not by the direction of any higher State authority. If the Attorney General can continue this litigation against the will of the Levee Board, it logically follows that the ultimate power of disposition of the lands rests in him, not in the Levee Board, for to continue the suit is to rescind the act of compromise into which the Levee Board has entered.

By his act in seeking to continue the litigation, the Attorney General therefore arrogates to himself the ultimate authority over these lands, an authority which it has been solemnly adjudged by the Supreme Court of Louisiana the State itself does not possess. If these pretensions be the law, then truly the servant is greater than the master.

This contention, however, finds no support in judicial precedent.

In *Smith vs. Vicksburg, S. & P. Ry. Co.*, 112 La. 985, a compromise was entered into between plaintiff and defendant and the attorneys of the plaintiff attacked the compromise on the ground that it was made in bad faith and by collusion. The Court said:

"Defendant is to be considered as any other third person not prohibited by law from entering into a compromise with its creditors. The moral side of the question is not before us, nor the consideration of that which a careful business man, anxious to see that every one receive his own, would have done under similar circumstances. But this does not create a legal tie between the attorneys here and the defendant company. * * *

" 'We know of no law giving an attorney at law a privilege on a judgment not yet in existence, and no law to compel a party to prosecute a suit to a judgment in order that the attorney in the suit may obtain and enforce a privilege on the said judgment for his professional services. The plaintiffs having compromised their suit against the defendants (which they had a right to do) and demanded its dismissal, it was at an end, and there is no suit in which an intervention can be maintained.' "

Citing *Rind vs. Hunsicker,* 24 La. Ann. 572.

It will be borne in mind that after the act of compromise was made, and under date of July 19, 1913, the secretary of the Levee Board, by order of that body, wrote to the Attorney General instructing him, as attorney representing the Board, to dismiss the suit of *Board of Levee Commissioners of the Tensas Basin Levee District vs. Tensas Delta Land Company, Limited,* No. 694 on the docket of the United States District Court for the Western District of Louisiana, at the cost of plaintiff. (See letter in transcript.) The question presented is, therefore, analogous to that presented in *Ikerd vs. Borland,* 35 La. Ann. 337, 338, where it is said by the Court:

"The right here asserted is not merely to resist the dismissal of an appeal taken by the client, but actually to take an appeal by giving bond in the name of his client against the latter's will and orders."

The Supreme Court of Louisiana did not uphold the right thus asserted, but declared that an attorney-at-law who has been discharged by his client cannot, against the will and orders of the latter, give bond and prosecute an appeal in his name, and that an appeal so taken will be dismissed on motion of the client.

In the later case, *Voelkel vs. Succession of Aurich,* 118 La. 526, it is held that where an attorney for a litigant moves, as such attorney, for an appeal from a judgment against his client, and it is not pretended that the attorney personally has any appealable interest, the appeal will be dismissed, as the Court is obliged to notice, of its own motion, the absence of the proper parties, since it has no authority to adjudicate the rights of persons who are not before it, or of persons who have no rights before it. The converse of this proposition is recognized in *Keoughan vs. Oil Co.,* 116 La. 773, where it is held that after a judgment an attorney-at-law, under the general authority from his client to act in the case, is without authority to make a gratuitous waiver of appeal.

If an appeal lies from the decree entered by Judge Boarman dismissing the bill, that appeal, under the foregoing authorities, lies at the instance of the Levee Board, and no one else. It is evident, however, that the Levee Board is not entitled to appeal, inasmuch as the decree was entered with its consent. No appeal having been taken by the Levee Board, in no event will counsel be heard in its behalf in the Appellate Court. This principle is recognized in *Fitchie vs. Brown,* 211 U. S. 321, 328, 329. In that case executors were parties to the action, but did not appeal. Counsel for the executors claimed the right, however, to

be heard in the Supreme Court. Mr. Justice Peckham, in the opinion of the Court, said:

> "The counsel for the executors of the testator, appellees herein, was permitted in this court to file a brief and was heard orally on the argument before us, although no appeal from the decree had been taken by the executors. This Court stating, however, that it would thereafter decide whether counsel for executors had any right to be heard to contend against the decree of the Court below. * * *
>
> "We are of opinion that counsel for the executors had no right to appear and be heard against the decree, no appeal having been taken from it by his clients."

IX.

The Law Favors Compromise of Disputed Claims and the Civil Code of Louisiana Makes Express Provision Therefor.

Divers claims of the respective parties were in dispute between them in the court below. The Levee Board filed its bill seeking to rescind the sale to the Land Company, made November 9, 1898, setting up, as grounds therefor, fraud in the sale, disguised donation and lesion. The Land Company denied all charges thus made and insisted upon the validity of the sale.

While the cause was pending for trial on the merits, the parties to the suit saw fit to compromise the same. In thus entering into the act of compromise, they dealt with each other on terms of equality. They held no relation of trust or confidence one to the other. Each had knowledge, or the opportunity to acquire knowledge, of every fact bearing upon the validity of their respective claims. A compromise made under such circumstances is within the power

of the parties and favored by the Courts and invariably upheld by them.

Hennessy vs. Bacon, 137 U. S. 78; *Cleveland vs. Richardson*, 132 U. S. 318, 329; *Hager vs. Thompson*, 1 Black 80; *Chicago & Northwestern Railway Co. vs. Wilcox* (C. C. A.), 116 Fed. 913, 914.

In *Hennessy vs. Bacon*, 137 U. S. 78, 85, in the opinion of the Court, by Mr. Justice Harlan, it is said:

> "It is the case of the compromise of a disputed claim, the parties dealing with each other upon terms of perfect equality, holding no relation of trust or confidence to each other, and each having knowledge, or having the opportunity to acquire knowledge, of every fact bearing upon the question of the validity of their respective claims. (*Cleveland vs. Richardson*, 132 U. S. 318, 329.) Such a settlement ought not to be overthrown, even if the Court should now be of opinion that the party complaining of it surrendered rights that the law, if appealed to, would have sustained."

The rule is thus stated by Circuit Judge Sanborn in the opinion of the Circuit Court of Appeals of the Eighth Circuit, in *Chicago & Northwestern Railway Co. vs. Wilcox*, 116 Fed. 913, 914:

> "The policy of the law has always been to promote and sustain the compromise and settlement of disputed claims. It loves peace, hates broils and dissensions and discourages the prolongation of litigation and the revival of controversies which have once been closed. The judgment of a Court settles the claims submitted to it and estops the parties from

> again litigating them after they have been adjudicated. In the absence of fraud or mistake, an executed agreement of settlement of an unlinquidated or disputed claim constitutes as conclusive and as effectual an estoppel against the parties to the compromise from again litigating the claim thus settled as the final judgment of a Court of competent jurisdiction to the effect that the rights of the parties are as they are set forth in the agreement, and such a contract is always upheld by the Courts."

The Civil Code of Louisiana defines a transaction or compromise and makes specific provision for ending lawsuits by the execution of such instruments as that now before the court.

Article 3071 of the Civil Code reads:

> "A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.
>
> "This contract must be reduced into writing."

Thus it is seen there are three elements which go to make up a transaction or compromise: There must be differences between two or more persons in respect of which a lawsuit is contemplated or exists or may be brought; the parties must agree upon the terms of adjusting such differences; the contract must be reduced to writing. The document presented to the Court below, constituting the act of compromise of July 11, 1913, is correct in form, and embraces every element which goes to make up a transaction or compromise within the above definition of the Louisiana Civil Code.

Litigation was pending between the parties. They agreed, after thorough discussion, to adjust their differences. They reached an amicable agreement which each was willing to accept and preferred to the hope of gaining, balanced by the danger of losing. Complainant was willing to accept $100,000 and ratify and confirm defendant's title to the property in controversy. Defendant was willing to give the $100,000 and have its title ratified and confirmed. The contract of compromise was reduced to writing and executed before a Notary, with two witnesses.

Who, then, has the right to enter into a contract of compromise, or make a transaction of this character? Article 3072 of the Civil Code of Louisiana reads as follows:

> "A man to transact must have the capacity to dispose of the things included in the transaction."

Some of the powers vested by statute in the Levee Board have already been noted in Division IV of this argument. We have there seen that the title to the lands was vested by the State of Louisiana in the Levee Board; that there was likewise conferred upon the Levee Board the power to alienate without limit; and that the Levee Board was also invested with the authority to sue and be sued in its corporate name.

The power to alienate the lands without limit necessarily involves the power to compromise a pending suit respecting the lands. The case is brought within the direct terms of Article 3072 of the Civil Code, which declares that a person, in order to transact must have the capacity to dispose of the things included in the transaction.

Again, as we have seen, Section 3 of Act 59 of the Laws of 1886, creating the Levee Board and defining its powers, expressly invests it with power to sue, and this

necessarily implies the power to compromise and end the suit begun. We venture to say that the power to begin and conduct a suit, without the power to end it, never yet was conferred upon a corporate body.

The Civil Code declares what may be embraced within the terms of a transaction or compromise. Article 3073 reads:

> "Transactions regulate only the differences which appear clearly to be comprehended in them by the intention of the parties, whether it be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them.
>
> "The renunciation, which is made therein to all rights, claims and pretensions, extends only to what relates to the differences on which the transaction arises."

This article, it will be perceived, provides for special compromises wherein the parties adjust particular differences that exist between them as contra-distinguished from general compromises provided for by Article 3083 of the Code, wherein parties compromise generally on all differences which they may have had with one another, the titles which they then know nothing of and which are afterwards discovered, etc.

In the particular instance submitted to the Court below, the compromise comes within the terms of Article 3073 above quoted, and is intended to, and does, clearly adjust and settle, as therein stated, all the differences existing between the parties as set forth in the bill of complaint and amended bills of complaint filed in the suit, and forever sets at rest all questions relating to the validity of

the titles of the Tensas Delta Land Company, Limited, to the lands situate in the eight parishes mentioned in the bill.

Article 3078 of the Civil Code declares the effect of such a compromise. It reads:

> "Transactions (compromises) have, between the interested parties, a force equal to the authority of things adjudged. They cannot be attacked on account of any error in law or any lesion. But an error in calculation may always be corrected."

The term "thing adjudged" is defined by the Civil Code of Louisiana, Article 3556, paragraph 31, as follows:

> "Thing adjudged is said of that which has been decided by a final judgment, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for appealing is elapsed, or because it has been confirmed on the appeal."

The Civil Code makes provision for the rescission of a transaction or compromise, but it may not be done in the manner attempted by the Attorney General in the instant cause. Article 3079 reads:

> "A transaction may be rescinded notwithstanding, whenever there exists an error in the person or on the matter in dispute. It may likewise be rescinded in the cases where there exists fraud or violence."

Nowhere in the record in the suit at bar is it claimed or intimated that there exists an error on the matter in dispute, or that there exists any fraud or violence in the consummation of the transaction. In such case only would there exist a reason in law for setting aside the transaction

or compromise, and then it could be done only at the instance of one of the parties thereto, or someone having a legal interest therein.

X.

The Fact That the Bill of Complaint Charges Fraud in the Sale Made by the Levee Board on November 9, 1898, Does Not Take Away the Right of the Levee Board to Compromise the Suit.

In its bill of complaint and amended bills of complaint the Levee Board sought to avoid the sale made to the Land Company on November 9, 1898, charging fraud in the sale, disguised donation and lesion. The objections of the Attorney General to the dismissal of the suit, and likewise his petition for leave to intervene and appeal, assume that there was in fact fraud in the sale made by the Levee Board in the year 1898, and from this it is argued that the parties ought not to be permitted to compromise a fraud. No such facts were shown before the District Judge. On the contrary, it appears from the record that all charges of fraud or wrongdoing were denied by defendant Land Company under oath in an answer filed in support of the demurrer, which answer appears on pages 54 to 68, inclusive, of the printed record in cause No. 2446, and was verified by the Honorable F. G. Hudson, late of Monroe, La., now deceased, who was then acting as the duly appointed legal agent of the Land Company.

It thus appears that fraud in the sale was charged by complainant and denied under oath by defendant; and it is gravely argued by the Attorney General that, fraud being charged, the compromise cannot stand, for the reason that it is against public policy to allow the compromise of a

fraud. If the mere fact that fraud is charged, although not proved, prevents the compromise of suit, it results that a large proportion of the suits begun in our various courts, State and Federal, are placed beyond the possibility of compromise by mutual agreement of the parties, because nothing is more common in litigation than for a party, conceiving himself to be aggrieved, to charge fraud against his adversary.

The Attorney General assumes in his objections and petitions to declare in what the public policy of Louisiana consists. But, as said by the Supreme Court of the United States in the *Girard will* case, the public policy of a State is to be found in its Constitution, laws and judicial decisions, and we are not to look beyond those to general considerations of supposed public interests. It is added by Mr. Justice Story, in the opinion of the Court:

> "The question what is the public policy of a State and what is contrary to it, if inquired into beyond these limits, will be found to be one of great vagueness and uncertainty and to involve discussions which scarcely come within the range of judicial duties and functions and upon which men may and will complexionally differ."
>
> *Vidal vs. Girard's Executors,* 2 How. 127, 197, 198.

Confining, then, the consideration of this question of public policy to what is found in the Constitution, statutes or judicial decisions of Louisiana, it will be seen that the contention that this compromise is against the public policy of the State is wholly destitute of foundation. We are aware of nothing in the Constitution, statutes or judicial decisions of Louisiana which takes from the Levee Board

and places in the Attorney General the ultimate power of disposition of these lands. On the contrary, the statutes of Louisiana expressly vest in the Levee Board the title to these lands, the power without limit to alienate the same, and the power to sue in respect thereto.

Moreover, the Civil Code of Louisiana expressly contemplates that a transaction or compromise may embrace and settle differences between the parties, even though fraud is charged. Article 3080 is as follows:

> "A transaction may also be rescinded, when it has been made in execution of a title which is null, unless the parties have expressly compromised on the nullity."

This is a negative pregnant and intends the affirmative. A common instance of a title which is null is the case where the title is based on fraud. The clear intendment of this article is that, if the nullity charged or existing grows out of fraud, and with full knowledge and appreciation thereof, the parties expressly compromise on the nullity, the transaction or compromise is effective in law in like manner as if made in respect of any other matter of difference.

In *Russ vs. Union Oil Co.*, 113 La. 196, 205, it is said:

> "There is no rule of law, morals or ethics which denies to the ordinary citizen the right to compromise, with a person asserting it, a claim against him for damages; * * * and, when the compromise is effected in the manner provided by law, it has the force of the thing adjudged and cannot be attacked collaterally, or for error of law or lesion, in a direct action."

Again in *Turregano vs. Barnett*, 127 La. 620, it is said:

> "A settlement of business transactions where, with full knowledge of all material facts, money is accepted and a receipt in full given, will not be disturbed, in the absence of allegation and proof of error or fraud."

The Louisiana case most nearly parallel to the case at bar is *State vs. Hackley, Hume & Joyce*, 119 La. 482. Suit was brought by the State of Louisiana against Hackley, Hume & Joyce to recover lands in Tangipahoa Parish. It was charged that the lands had been fraudulently entered and patents therefor from the State fraudulently procured. The District Attorney was authorized by the Governor to bring suit, and brought the same accordingly. Subsequently a tentative compromise was entered into between Hackley, Hume & Joyce and the Governor, wherein it was proposed amicably to adjust the issues in suit and settle by compromise the title to the lands in consideration of the payment to the State of the sum of $27,447.12. This proposition it was proposed to submit to the General Assembly at its session of 1908. The District Attorney refused to stay proceedings in the suit at the request of the Governor, for reasons sufficient unto himself. Whereupon the Governor requested the Attorney General to file a motion to stay the proceedings until the Legislature might have opportunity to pass upon the proposed compromise. This motion was made and granted by the trial Court, and thereupon the District Attorney applied to the Supreme Court for writs of *certiorari* and *mandamus*, insisting upon his authority to continue in the prosecution of the suit brought by him in the name of the State, notwithstanding the stay obtained by

the Attorney General. The Supreme Court denied the writ of *mandamus* asked, saying:

> "The General Assembly should be given the opportunity to consider questions that here arise in regard to these lands. They doubtless will settle upon such action as will protect the State."

In the instant cause the Levee Board possessed the same power over the lands in controversy, and the right to compromise a suit respecting the same, as was possessed by the State of Louisiana in respect to the lands involved in the Hackley, Hume & Joyce suit, and if it was proper for the General Assembly to compromise the cause reported in the 119th Louisiana, notwithstanding fraud in the acquisition of the lands was claimed, it was clearly within the power of the Levee Board to compromise the issues involved in the suit at bar.

In *Antoine vs. Smith,* 40 La. An. 560, suit was brought for the recovery from the defendant of two hundred shares of the capital stock of the Louisiana State Lottery Company. Plaintiff had become possessed of these shares, but being "engaged in politics," the circumstances that he held the shares was concealed by causing them to be placed in the name of another. The cause of the contract and the motive of the transfer were intrinsically illegal and opposed to good morals and public policy, and with reference thereto the Supreme Court of Louisiana went so far in its opinion as to declare:

> "That such contracts cannot be enforced has been held in very many opinions of this Court and its predecessors, is evidenced by the following casses (citing authorities).

> "But, however much we may reprobate such scandalous transactions; however much we may feel constrained, for decency's sake, to summarily eject the plaintiff from the portals of the temple of justice, it is our deliberate opinion that it cannot be done in the present attitude of this affair."

Notwithstanding the intrinsic illegality of the contract, the Court, under Article 3071 of the Civil Code, upheld the transaction or compromise between the parties relative to the subject-matter of the litigation, holding that the only essential as a matter of form, which that article requires, is that the contract of compromise must be reduced to writing.

An analogous rule is laid down in *Calhoun vs. Lane,* 39 La. An. 594, 599, where the Court upholds a compromise between two forced heirs to the succession of their mother, which had the effect of binding a married woman's property for the debt of her husband. The Court said:

> "It cannot be contested that a married woman has the right to compromise a lawsuit against herself, or to make a transaction for the purpose of preventing a lawsuit against herself; and transactions have between the parties a force equal to the authority of things adjudged."

Oglesby vs. Attrill, 105 U. S. 605, was a writ of error to the Circuit Court of the United States for the District of Louisiana. It was sought by defendants to enforce a reconventional demand or counterclaim against plaintiffs, because of the fraud of plaintiff and his associates in causing assessments to be levied on corporate shares owned by defendants, whereby such shares were lost. It appeared, however,

that the parties had entered into a compromise in substantial accordance with Article 3071 of the Civil Code of Louisiana. It is said by Mr. Justice Field, in the opinion of the Court (pp. 610-611):

> "The suits between the defendants and the Crescent City company involved the validity of the assessment which they, on account 'of frauds and machinations of the officers,' sought to enjoin, whilst the company sought to enforce its payment. The compromise concluded embraced the dismissal of the several suits—of those brought against the defendants, and the one brought by them against the company—the transfer of their stock, and their release from present and future assessments thereon. There is no averment that it was induced by any false representations of the plaintiff or of the directors, or that the assessment was not a genuine one, or that the agreement of the directors that no assessment should be levied on their stock was carried into effect; or that there was any concealment of the affairs of the company; and of the value of the stock the defendants were as competent to judge as any others in the market. * * * The compromise stands, therefore, as a judgment, making a settlement of the very matters now set up as grounds of complaint in the petition in reconvention; that is, 'the frauds and machinations of the officers of the company' in levying the assessment. It settled all claims arising from the assessment, and the alleged fraudulent purposes of the officers in connection with it. Though made directly between the company and the defendants, it protects from further suit those who advised, equally with those who levied, the assessment; participants in whatever wrong was committed, if any there were, as well as principals; abettors as well as doers of it. **No allegations of fraud, in addition to those made at the settlement, can**

> **prevent the compromise from having effect as a judgment thereon.** It may, indeed, by a direct proceeding instituted for that purpose, be rescinded for fraud, but it cannot, any more than any other judgment, be attacked collaterally. (*Adle vs. Prudhomme*, 16 La. An. 343.) In the face of the compromise, the reconventional demand cannot be sustained."

From the foregoing authorities it results that it is not against the public policy of the State of Louisiana to compromise a suit in which the issue of fraud *vel non* is involved. As we have already seen, the Levee Board, as respects the lands in controversy, was possessed of the power to alienate without limit. An unlimited power to sell necessarily involves the power to compromise a suit with respect to the lands. The greater includes the less.

The Attorney General insists (petition, p. 25) that the compromise is to be treated as a sale of the lands, and that it is irregular because the lands were not duly sold to the highest bidder for cash under Act No. 215 of the General Assembly of Louisiana of 1908. There is no merit in this contention. The lands, when sold in November, 1898, were exposed at public sale to the highest bidder. In July, 1913, when the act of compromise was made, the Levee Board did not assume to sell the lands, but merely to compromise a litigation which involved the mere possible right to recover the same.

An argument like that now made by the Attorney General was addressed to the Court in *Calhoun vs. Lane*, 39 La. An. 594, 599. The Court said:

> "Assuming the agreement to be a sale and not a compromise, defendant's counsel further argues that it is void, for the reason that a married woman is not

> permitted to purchase property on terms of credit on her separate account, unless she is possessed of adequate means to discharge her obligations from her own resources.
>
> "While that is true as a general proposition, the principle is not properly invoked here. We have already ascertained that the agreement is not a sale; but it is one which a **previously** existing title of defendant is recognized and affirmed."

Neither is there merit in the suggestion that a different rule should apply because the Levee Board is a public body, a municipal corporation. No such distinction exists upon either reason or authority. From time immemorial the Government, as well as municipal corporations, have been wont to compromise embezzlements and other frauds of public officers. When such compromise is confined to the civil liability, the power or propriety of the act has not been questioned in courts of justice.

In *United States vs. Knabe* (C. C.), 147 Fed. 802, a compromise was made with the sureties on the bonds of certain defaulting officers of the United States. The Court said (p. 806):

> "The law favors compromises and settlement of disputed property and pecuniary rights, as well where the Government is a party as where the litigation is solely between private individuals. When propositions of compromise of such disputes are made to the Government and accepted by it, the Courts will apply the same rules for ascertaining their meaning as govern in construing like contracts between man and man."

As we have seen, the correctness of this rule as applied to lands claimed to have been acquired from a State or municipal body by fraud is distinctly recognized in the case in 119th Louisiana above cited.

XI.

The Land Company Paid $100,000 as a Consideration For the Compromise, and In No Event Could That Compromise Be Rescinded, Because the Moneys So Paid Have Not Been Restored.

There is no suggestion by the Attorney General that the State or the Levee Board, or anybody else, intends to refund or will refund the money paid by the Land Company as the consideration of the act of compromise. On the contrary, the moneys have been covered into the State Treasury and passed to the credit of the Tensas Basin Levee District and applied to the uses of the Levee Board. Not only does the Levee Board express no intent to refund the $100,000 received by it, but it declares its wish to retain the money and to stand upon the compromise into which it entered.

To carry on the suit (if that be allowed) is to rescind the compromise without restoring the consideration. This it would be against conscience for the Levee Board to do, and hence it would not be permitted. If the Levee Board would not be permitted thus to repudiate or rescind the compromise, another will not be allowed to do so in its behalf.

It is a familiar rule that a person who enters into a contract and afterwards seeks to avoid the effect of the contract on any ground that entitles him to rescind it, must first

restore what he has received and place the other party in *statu quo.*

> *Grymes vs. Sanders,* 93 U. S. 55, 62; *McLean vs. Clapp,* 141 *Id.* 429; *Ward vs. Sherman,* 192 *Id.* 168, 177; *Cook vs. Fidelity & Deposit Co.* (C. C. A.), 167 Fed. 95, 101; *Hill vs. Northern Pacific Railway Co.* (C. C. A.), 113 *Id.* 914, 917-918; *Ackerman vs. McShane,* 43 La. An. 507; *Althoff vs. Transit Co.,* 204 Mo. 166.

It must be borne in mind that this sum of $100,000 was received by the Levee Board pursuant to the last contract entered into between the parties to the suit—viz., the act of compromise. Upon elemental principles complainant cannot procure a decree in its favor until or unless that act of compromise be first set aside. To allow the act of compromise to be set aside and the litigation to proceed, and at the same time permit the Levee Board to retain the $100,000 which it secured only on the express condition that it release all claim to the lands in suit, would be to sanction the perpetration of a fraud.

It is, therefore, perceived that before the complainant, or anyone in its behalf, may prevail in the suit and recover the lands, the right of the complainant to rescind **two** contracts must be shown; **first,** the original contract of sale of November 9, 1898; **second,** the act of compromise of July 11, 1913.

The act of compromise or settlement is a **new** contract, and no right to rescind it is shown. The language of the Court in *McLean vs. Clapp,* 141 U. S. 429, 432, is applicable:

> **"The settlement was a new contract** between him and Clapp **and the law is clear that he cannot**

> **take the benefits of that contract and repudiate its burdens.** * * * Now, if he desired to rescind his contract, his duty was at once to return what he had received and repudiate wholly and forever the transaction. So far from doing this he did exactly the contrary; he retained all the notes and securities received under the settlement and has never yet returned one of them.
>
> "Were this all that appeared in the case, there would be nothing rising to the dignity of a question."

In *Ackerman vs. McShane*, 43 La. Ann. 507, in order to settle the affairs of a partnership, the plaintiff and defendant entered into a compromise in which plaintiff received $20,000 in cash, in full satisfaction and settlement of the interest of the testator in the partnership. A short time after the compromise was consummated plaintiff brought suit for an additional amount of $9,000, charging that the defendant, a surviving partner, had made untrue statements and had committed frauds in the settlement. The plaintiff did not allege that she made a tender of the amount received by her as one of the parties to the compromise, but instead she proposed to supplement the amount received to a sum equal to the alleged value of the property. In the opinion of the Court it is said:

> "The defrauded party, if defrauded, cannot be restored to his original rights in the manner proposed. Good pleading and regularity, which should characterize legal proceedings, require that in suits of this nature the party shall resort to an action in rescission, and that the amount received shall be tendered or deposited. In all such actions the parties seeking relief must first offer to restore his adversary to the situation he was in before the contract.
>
> "As long as the plaintiff retains the consideration and does not offer to return the amount received, he is estopped."

In *Hill vs. Northern Pacific Railway Co.* (C. C. A.), 113 Fed. 914, 918, a release was executed to a railway company for a claim for personal injuries. Afterwards suit was brought to recover for the injuries, and it was sought to avoid the settlement as obtained by false and fraudulent representations. The Court quoted with approval the following statement of the law:

> "'But there is another insurmountable obstacle in the complainant's way upon this feature of the case, that is, although she desires to set aside the contract of release, she still retains the consideration and has never offered to return it. Where a party attempts to rescind a contract, the rescission must be complete. He cannot affirm it in part and reject it in part. Common honesty would require him seeking to escape the burdens of the contract to return the benefits which he has received. This is not only a rule of common honesty and fairness, but has been recognized by the Courts from time immemorial.'"

So, also, in *Cook vs. Fidelity & Deposit Co.*, 167 Fed. 101 (C. C. A.), an attack was made upon a settlement for fraud. It is said by the Court :

> "And even if it should be conceded that in this action at law the plaintiff in error was entitled to show, if he could, that the agreements entered into subsequent to August 15, 1905, were executed by reason of fraud or misrepresentations, still upon the most obvious principles of right he could not avoid them while retaining the money and other property received by him by virtue of their execution."

When this cause was before the Court on demurrer (*Board of Levee Commissioners vs. Tensas Delta Land*

Company, 204 Fed. 736, 741), it was held that, inasmuch as the bill of complaint alleged that moneys in excess of the original purchase price had been received by the Land Company from the sales of lands, it was not necessary for complainant in its bill to tender to defendant Land Company the $130,000 originally paid for the lands, because the Court could probably adjust the equities between the parties. Clearly the principle there enunciated has no application here. The sum of $100,000 to which we now advert was not received by the Levee Board under the contract of sale made in November, 1898, but was paid to secure the compromise of disputed claims.

There was a *bona fide* dispute between the parties respecting the claims made by the Levee Board in its bill. The Land Company insisted that those claims were wholly false. These disputed claims of the respective parties were made the subject of compromise. It is well settled, as said in *Fire Insurance Association vs. Wickham*, 141 U. S. 564, 577, that

> "If there be a *bona fide* dispute as to the amount due, such dispute may be the subject of a compromise and payment of a certain sum in satisfaction of the entire claim."

This compromise of a disputed claim constitutes, as we have seen, **"a new contract"** between the parties. Because of that new contract the Land Company parted with $100,000 in cash. These moneys have never been restored, nor is any offer made to restore the same, and hence "the law is clear," as said by the Supreme Court of the United States in *McLean vs. Clapp, supra*, that complainant "cannot take the benefits of that contract and repudiate its burdens."

The State of Louisiana created this Levee Board for the express purpose of receiving, administering and disposing of the swamp lands and tax-title lands within the district and applying the proceeds for the benefit of the inhabitants of the district, in manner as provided in the act. The disposition of the lands, and likewise the disposition of suits or proceedings respecting the same, are confided by legislative enactment to the discretion of that body. It is a body composed of representative citizens residing in the eight parishes composing the district. They are men of character and standing in their respective communities. Presumably they are familiar with the value of the lands and know the interests of their constituents, and are competent to act in furtherance thereof.

After much deliberation, and in the exercise of their best judgment, the members of this Levee Board have seen fit to compromise a pending litigation respecting these lands, the success or failure of which depends not upon a mere question of law, but upon their ability or inability to establish facts claimed in their bill. The Honorable Attorney General, while not questioning their good faith, denies their legal right to decide matters expressly confided by legislative act to their discretion. He insists, apparently, that under some rule of law, hitherto unheard of, they have no power to do aught but prosecute the litigation to a conclusion, even though it be manifestly to the advantage of the inhabitants of the Levee District to compromise the same.

If these pretensions of the law officer of the State are well founded, the same may be exercised in the case of every municipal corporation or board in the State of Louisiana, and no longer will there be local self-government in that State, and the powers of all those local bodies may no longer

be employed according to the best judgment of the members composing the same, but only as the paramount and superintending authority of the Attorney General may determine. There is no warrant in the laws of Louisiana for such claims.

XII.

We again call attention to the fact that the Attorney General does not in any manner attack the compromise made by the Levee Board on July 11th, 1913, except to assert that it was a compromise of a fraud. He does not impugn the good faith, or business judgment, or the conduct of the members of the Levee Board. He was not the Attorney General who brought either the original suit by the State, or the suit by the Levee Board. This was done by his predecessor in office, Hon. Walter Guion. Having inherited it, he evidently regards it as an heirloom.

XIII.

The claim of the Attorney General that Act No. 3 of the extra session of 1910, quoted in full above, took away from the Levee Board—and consequently every political agency or subdivision in the State—all control over cases involving title to land is without any foundation. The act does not make any such provision. It would be a very broad stretching of that statute to say that if repealed those parts of the special charter of every municipal corporation and Levee Board in the State which give them power to sue and be sued, to hold and dispose of lands, and to exercise their corporate discretion and judgment in all matters within their corporate powers.

The act simply makes the Attorney General, whenever so instructed by the Governor, act as the counsel for the State and its sub-divisions. It does not make him as counsel for the State or one of its sub-divisions in a land case the master of either the State or of its sub-divisions, with power to veto any action the State or its subdivisions may take looking to an adjustment, settlement or compromise of the litigation.

Respectfully submitted,

EDGAR H. FARRAR,
HENRY BERNSTEIN,
WILLARD F. KEENEY,
Counsel for Respondents.

UNITED STATES OF AMERICA EX REL. THE STATE OF LOUISIANA *v.* HON. GEORGE WHITFIELD JACK, JUDGE OF UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 264. Argued May 3, 1917.—Decided June 4, 1917.

The decision of the Supreme Court of Louisiana in *State* v. *Tensas Delta Land Co.*, 126 Louisiana, 59, that the State had no interest or authority entitling it to intervene in a suit brought by the Tensas Basin Levee Board for the recovery of lands which the Board had conveyed after receiving title from the State, is conclusive on this court, in the absence of any later state decision or statute modifying its effect.

The Act of Louisiana of August 19, 1910, making it the duty of the Attorney General, upon the request of the Governor, to represent the State, or any political agency or subdivision thereof, in suits involving land belonging to the State or any such agency or subdivision, etc., did not operate to divest the Levee Board of its authority over suits to recover land and confer it, through the Governor, upon the Attorney General; as concerns the Board, its effect was merely to authorize the Attorney General, at request of the Governor, to represent the Board in the litigation.

This construction of the Act of August 19, 1910, agrees with the practical, contemporary construction placed upon it by two Attorneys General of the State, which the court regards as persuasive authority as to its true meaning.

Generally speaking, the authority of a court to make new parties to a suit, especially after decree, rests in its sound discretion, which, except for abuse, can not be reviewed upon appeal or error, or indirectly, by mandamus.

With exceptions not here applicable, no person may review a judgment by appeal or writ of error who is not a party or privy to the record.

Article 571 of the Code of Practice of Louisiana, providing: "The right of appeal is given not only to those who are parties to a cause in

which a judgment has been rendered against them, but also to third persons not parties to said suit when such third persons allege that they have been aggrieved by the judgment," can have no application to an equity suit in the federal courts.

217 Fed. Rep. 757, affirmed.

THE case is stated in the opinion.

Mr. Harry Gamble, Assistant Attorney General of the State of Louisiana, with whom *Mr. A. V. Coco*, Attorney General of the State of Louisiana, was on the briefs, for petitioner.

Mr. Henry Bernstein and *Mr. Willard F. Keeney* for respondent.

MR. JUSTICE CLARKE delivered the opinion of the court.

By act of its General Assembly in 1886 amended in 1888 the State of Louisiana created the Tensas Basin Levee District for the purpose of providing a system of levees and other works to aid in protecting the lands within its boundaries from floods and overflow. The act provided for the appointment of a Levee Board of Commissioners to have charge of the affairs of the District and constituted this Board a corporation, with power to sue and be sued, and to sell, mortgage, pledge and otherwise dispose of lands which the State donated and caused to be conveyed to the Board.

In 1898 the Levee Board sold to the Tensas Delta Land Company, Limited, a large acreage of the land thus acquired and executed conveyances for it.

Eleven years later, in 1909, suit was brought by the Attorney General of Louisiana in the name of the State, claiming that the sale of 1898 was fraudulent and void and praying that it should be set aside and that the State should be decreed to be the owner of the property.

Such proceedings were had in the case that the Supreme Court of Louisiana held (*State* v. *Tensas Delta Land Co.*, 126 Louisiana, 59) that the only proper party plaintiff in such a suit was the Levee Board and that the State being without authority to maintain it the case must be dismissed.

After the dismissal of the suit of the State the Levee Board brought suit against the Tensas Basin Land Company, Limited, in a District Court of Louisiana upon the same cause of action stated in the prior petition which case was removed to the United States District Court for the appropriate district. The petition was there given the form of a bill in equity, and as amended, a demurrer to it by the defendant was sustained. On appeal this decision was reversed and the case was remanded for further proceedings, but before the time allowed for answer had expired the defendant appeared and informed the District Court that $100,000 had been paid in settlement of the case agreed upon between the parties and moved the court to dismiss the suit. This motion was filed on July 22, 1913, and a rule was forthwith issued to the plaintiff to show cause on the first day of the next term of the court (October 20th) why the motion should not be granted. The return of service of this rule shows personal service on the Attorney General as Solicitor for the Levee Board and acknowledgment of service by the Board itself.

On August 5 the Board, appearing by its President, answered the rule to show cause, averring that it had "apprised its attorney of record" (the Attorney General of the State) "of the said settlement" and, admitting the allegations of the motion, prayed that the suit be forthwith dismissed at its cost.

The Attorney General for the State, not satisfied with the settlement, on October 6th filed a motion, which he signed "R. G. Pleasant, Attorney General, State of Louisiana and Attorney of Record for Complainant." In this

quite anomalous paper he averred somewhat rhetorically that the settlement made by the Levee Board for which he was attorney, was a "condoning and compromising" of a fraud to which the court should not assent, that he was acting in the case under authority of an act of the General Assembly of the State and by order of the Governor, to whom alone he was responsible, and "that the complainant could not compromise this suit, nor dismiss it without the Governor's consent." He prayed that the motion to dismiss be denied, the agreement of settlement disregarded, and that the case be set down for early trial.

The motion to dismiss came on for hearing on October 20th but the court deferred consideration of it until the next day and caused a telegram to be sent to the Attorney General in order that he might have full opportunity to be present and be heard, but he did not appear in person or by representative, and thereupon the court heard the evidence and "ordered, adjudged and decreed that the said compromise . . . be and the same is recognized by this court as having the effect of the thing adjudged and as settling all the issues involved in this case," and dismissed the suit.

It cannot escape notice that there is no allegation contained in any paper filed by the Attorney General that the Levee Board in compromising the controversy and suit did not act in perfect good faith, nor is there any challenge of the character or competency of the members of the Board.

After this entry of dismissal no further action was taken by the Attorney General until on the 6th day of the following April when he presented to the District Court a "petition of the United States of America on the relation of the State of Louisiana" praying that the State be permitted to intervene and appeal from the judgment ratifying the compromise and dismissing the suit.

The District Court denied this petition for leave to

intervene and appeal, and thereupon the Attorney General filed in the Circuit Court of Appeals for the Fifth Circuit a "petition for writs of mandamus and certiorari," in which he prayed that court to order that the State of Louisiana be allowed to intervene in the District Court and to appeal the case and that it order that a transcript of all records be sent up to it for review.

The Circuit Court of Appeals denied this petition assigning two reasons for its action, viz:

(1) Because the Supreme Court of Louisiana, on full consideration, had decided that the State was without real or beneficial interest in the lands in controversy, which decision must be controlling in that court; and

(2) Because the State was not a party to the record in the District Court "and one who is not a party to a record and judgment is not entitled to an appeal therefrom."

This decision is now here for review on certiorari.

This plain statement of the history of this litigation so argues against the claims of the petitioner as to make them in appearance, at least, unsubstantial to the point of being frivolous.

The Supreme Court of Louisiana, considering the statutes of its own State, held, in the case in which the State sought to set aside for fraud the same sale of the same lands involved in this litigation, 126 Louisiana, 59, that the "Legislature vested the absolute title to the lands in controversy in the Board of Commissioners of the Tensas Levee District, with full power to sell the same on such terms as the Board might deem proper. The Legislature also vested in said board full power to sue and be sued, and to stand in judgment, in all matters relating to their gestion and trust." "Most assuredly," also says the court, "the Legislature has divested the State absolutely of all beneficial interest in said lands, and transferred the same to the said Board of Levee Commissioners," and as it "has vested the power to sue and be sued in the Board of

Commissioners of the Tensas Levee District, and has vested no such co-ordinate power in the Governor and Attorney General, we are of the opinion that the institution of this suit in the name of the State is unauthorized."

This decision determining the effect of the state statutes, where no claim of federal right was involved, is accepted as conclusive by this court and unless it has been modified by statute (there has been no modifying decision) the application of the State to intervene and to appeal was properly denied.

To the seemingly insurmountable barrier to the claims of the petitioner presented by this Supreme Court decision we must add that the State was not at any time a party to this record and that its first application for leave to intervene and to appeal was long after the term at which the decree of dismissal was rendered and within a few days of the expiration of the time within which even "a real party in interest" would have been allowed an appeal.

With exceptions not even remotely applicable to a case such as we have here it has long been the law as settled by this court that "no person can bring a writ of error [an appeal is not different] to reverse a judgment who is not a party or privy to the record," *Bayard* v. *Lombard*, 9 How. 530, 551, and in *Ex parte Tobacco Board of Trade*, 222 U. S. 578, it was announced, in a *per curiam* opinion, as a subject no longer open to discussion, that "one who is not a party to a record and judgment is not entitled to appeal therefrom," and that a refusal after decree to permit new parties to a record cannot be reviewed by this court directly on appeal, or indirectly, by writ of mandamus, under circumstances such as were there and are here presented.

Two statutes of Louisiana are relied upon by counsel for petitioner to avoid the obvious and seemingly conclusive result of these decisions by this court and by the Supreme Court of Louisiana.

The first of these statutes is Article 571 of the Code of Practice of Louisiana, which reads: "The right of appeal is given, not only to those who were parties to the cause in which a judgment has been rendered against them, but also to third persons not parties to said suit, when such third persons allege that they have been aggrieved by the judgment."

It is urged in argument that in suits in the United States Courts which originate in Louisiana this statute permits an appeal by strangers to the record "who may allege that they have been aggrieved by the judgment," and the decision of the Supreme Court of Louisiana in 126 Louisiana, 59, *supra*, holding that the State cannot "be aggrieved" by this judgment because it is without beneficial interest in the lands which are the subject-matter of this litigation and is without authority to institute a suit for their recovery, is disposed of by saying that it is the practice in Louisiana courts to allow appeals by strangers to the record upon mere allegation of interest, leaving the validity of such allegation to be examined by the appellate court.

This claim cannot be seriously entertained in the face of the long time perfectly settled law that equity suits in federal courts and the appellate procedure in them are regulated exclusively by federal statutes and decisions unaffected by statutes of the States. Textbook citations will suffice: Federal Equity Practice, Street, §§ 97 and 98; A Federal Equity Suit, Simkins, Chapter 1.

The other statute relied upon by the petitioner was enacted by the General Assembly of Louisiana on August 19, 1910, after the decision by the Supreme Court referred to, and reads:

"Be it enacted by the General Assembly of the State of Louisiana, That it is hereby made the duty of the Attorney General of the State, upon the request of the Governor to represent the State or any political agency or subdivision

thereof, in any suit in any court involving title to any land or real property belonging to the State of Louisiana or any of its political agencies or subdivisions, whether the title to said land or real property is vested in or appears in the name of the State or in the name of any of its political agencies or subdivisions."

The claim made by the Attorney General for the State now is that this act "withdrew the authority theretofore granted to the Levee Board by section 3 of the Act of 1886 to sue in such cases as this, with all of the rights pertinent to the right to sue, and delegated it, through the Governor, to the Attorney General."

This is a large repealing effect by implication to be asserted for a statute so worded and apparently so simple, and that such meaning was not given to it by the present Attorney General's predecessor in office, who was charged with the execution of the statute at the time this litigation was commenced and almost immediately after its enactment, is clear from these facts appearing of record:

The suit by the Levee Board as petitioner was commenced after this Act of August 19, 1910, was passed and yet the petition, signed by the Attorney General as one of the Solicitors of the Board, alleges that it was commenced by virtue of a resolution adopted by the Board on the fourteenth day of the preceding July (thus reciting an authority adopted pursuant to power which it is now claimed had been withdrawn from the Board). The petition also recites that the Attorney General (predecessor of the present incumbent) appears in the suit pursuant to the authority and direction of the Governor "to represent said Board of Levee Commissioners . . . in the prosecution of this suit;" that the board is a corporation with power to sue and be sued, to take title to and to sell lands under the same laws which had been construed by the Louisiana Supreme Court (126 Louisiana, 59) and it prays for a decree "recognizing your petitioner [the Levee Board]

to be the owner of all of said lands so fraudulently and illegally conveyed." The Attorney General, with another, signs the petition as Attorney "of the Board of Levee Commissioners of the Tensas Basin Levee District," and when the case was removed to the United States District Court the petition was recast into a bill in equity in which, after repeating the allegations and prayer of the original bill, the then Attorney General adds that the Levee Board has "in compliance with the law as laid down by the Supreme Court of the State of Louisiana in the opinion and judgment rendered by it as aforesaid" (126 Louisiana, 59) "brought this suit as it understands it is its duty to do."

Even in his protest to the District Court against the settlement, the Attorney General appeared "as Attorney of record for the complainant," the Levee Board, and it was long after term and not until six months, lacking sixteen days, after the decree of the District Court approving the settlement had been entered, that he left off the character of solicitor for the Board and, appearing for the State, petitioned for leave for it to intervene and appeal from the decision affirming the settlement approved by his former client. Even in this petition no claim is made that the Board had been deprived of its powers by the Act of August 19, 1910, or that it had acted otherwise than in the utmost good faith in making the compromise.

The first time that this astonishing assertion of a repeal by implication by the Act of August 19, 1910, appears in the record, so far as we can discover, is in the brief filed by a third Attorney General on April 30, 1917.

This summary of the proceedings in the case out of which the petition we are considering grew shows that the predecessor of the present Attorney General, who was in office when the Act of 1910 was passed, and also the Attorney General who succeeded him, both contended, until

nearly six months after the entry of the settlement decree that the Supreme Court had settled as the law of the case that the State was without title or beneficial interest which would enable it to maintain a suit to set aside the sale alleged to be fraudulent; that the proper plaintiff in such a case was the Levee Board to which the State had committed the title, custody and power of disposition of the lands in controversy and also, apparently, that the purpose of the Act of August, 1910, was simply to authorize the Attorney General, on the request of the Governor, to take charge (in this case with another solicitor) of a suit to be instituted by the Levee Board, and thereby to place his professional learning and the weight of his official character at the service of this plaintiff, an "agency or subdivision" of the State. Both Attorneys General assumed that the powers of the State and of the Levee Board over the subject-matter continued as the Supreme Court had defined them to be before the Act of August, 1910, was passed and, as we have seen, it was not until long after the entry of the settlement decree that the contention first appeared that the act took away from the Levee Board and gave to the State the authority to conduct the required litigation.

This contemporary construction of the act by the two law officers of the State charged with acting under it is persuasive authority as to its true meaning, and, upon full consideration, we think it is the correct interpretation of it.

To this we add that, except in a class of cases to which this case does not belong, the authority of a court to make new parties to a suit, especially after judgment or decree, rests in its sound discretion, which, except for abuse, cannot be reviewed upon an appeal or writ of error. No claim is made of abuse of discretion by the District Court and plainly, if made, it would be groundless, since the judge refusing to permit the State to intervene had before him at

the time of his refusal the decision of its own Supreme Court that the State was without title, legal or beneficial, qualifying it to litigate the questions involved.

In the original bill the not uncommon allegation of fraud is made, which is denied in the answer. It was entirely proper for the parties to such a litigation, in good faith "balancing the hope of gaining with the danger of losing" to compromise the case and make an end of the controversy and, as we have said, it is not claimed anywhere in the record that the members of the Levee Board, which settled the suit, were not men of character and probity or that they did not act in perfect good faith in concluding the settlement. To these men the state law committed the care of the interests of the inhabitants of the district and within the bounds of their authority honestly exercised their action was conclusive upon the State.

It results that the decree of the Circuit Court of Appeals must be

Affirmed.